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a California limited liability company

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11  
12 UNITED STATES BANKRUPTCY COURT

13 EASTERN DISTRICT OF VIRGINIA

14 RICHMOND DIVISION

15 IN RE:

16 CIRCUIT CITY STORES, INC., *et al.*,

17 Debtors.

Chapter 11

Case No. 08-35653-KRH

Jointly Administered

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**RESPONSE OF GREENBACK  
ASSOCIATES, LLC TO DEBTORS'  
TENTH OMNIBUS OBJECTION TO  
CERTAIN DUPLICATE CLAIMS**

This response is filed by Greenback Associates, LLC, a California limited liability company ("Greenback") to the Debtor's Tenth Omnibus Objection to Certain Duplicate Claims (the "Debtors' Objection"). In the Objection, Debtors' assert that Greenback's Claim No. 12681 in the amount of \$737,801.12 and Claim No. 12871 in the amount of \$60,831.93 are duplicative of Greenback's Claim Nos. 12522 and 12523, respectively.

Greenback disputes Debtors' Objection on the grounds both sets of claims arise from different and distinct legal obligations against different Debtors, have merit, and are not duplicative.

Claim Nos. 12681 and 12871 were filed in the Circuit City Stores West Coast, Inc. case (Case No. 08-35654) and are based on the rejection of a nonresidential lease between Greenback Associates and Circuit City West Stores, Inc., as set forth in detail in Claims Nos. 12681 and

1 12871.

2 Claim Nos. 12522 and 12523 were filed in Circuit City Stores, Inc. case (Case No. 08-  
3 35653) and are based upon the assignment between Circuit City Stores, Inc. and Circuit City  
4 Stores West Coast, Inc.

5 Attached hereto as **Exhibit A** is a true and correct copy of the original Lease dated  
6 January 1, 1987 between Circuit City Stores, Inc. and Greenback Associates, LLC (the "Lease").  
7 Attached as **Exhibit B** is a true and correct copy of Assignment and Assumption of Lease dated  
8 May 1, 1994 between Circuit City Stores, Inc. and Circuit City Stores West Coast, Inc. (the  
9 "Assignment").

10 Under the Assignment, Circuit City Stores, Inc., as assignor, expressly obligated itself to  
11 perform Circuit City Stores West Coast's obligations under the Lease and was to "remain  
12 primarily liable for said performance, including without limitation, the payment of rent and the  
13 performance of all of the lessee's other obligations throughout the remainder of the term of the  
14 Lease." Likewise, under the Lease and Assignment, Circuit City Stores West Coast, as lessee,  
15 was contractual obligated to perform under the terms of the Lease.

16 These documents demonstrate that the obligation of Circuit City Stores West Coast, Inc.  
17 under the Lease as set forth in Claim Nos. 12681 and 12871 is a separate and distinct contractual  
18 obligation from the obligation of Circuit City Stores, Inc. under the Assignment as set forth in  
19 Claims Nos. 12522 and 12523.

20 Based thereon, Greenback requests that the court deny the Debtors' objection to  
21 Greenback's Claim Nos. 12681 and 12871 as duplicative claims.

22 Dated: June 26, 2009

TRAINOR FAIRBROOK

23  
24 By: /s/ Nancy Hotchkiss  
25 NANCY HOTCHKISS  
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# EXHIBIT A

GROUND LEASE

BY

GREENBACK ASSOCIATES

AND

CIRCUIT CITY STORES, INC.

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This Ground Lease ("Lease") is dated, for reference purposes only, June 1, 1987, and is executed, on the dates set opposite the signatures below, by and between Greenback Associates, a California general partnership ("Lessor"), whose current mailing address is 7700 College Town Drive, Suite 109, Sacramento, California 95826, and Circuit City Stores, Inc., a Virginia corporation ("Lessee"), whose current mailing address is 2040 Thalbro Street, Richmond, Virginia 23230.

RECITALS

A. Lessor owns a leasehold interest in land located in the County of Sacramento, State of California pursuant to a Ground Lease (hereinafter identified as the Master Lease).

B. Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, pursuant to the terms and conditions of this Lease, a portion of said land (which portion is hereinafter identified as the Land).

NOW, THEREFORE, Lessor and Lessee, in consideration of the various obligations set forth in this Lease, agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Lease, the following words and phrases shall have the indicated meanings:

1.1 "Access Area" means the area labeled Ingress and Egress Easement on Exhibit "A-1" attached hereto and incorporated herein by this reference, subject to relocation by Lessor as provided in Section 2.2;

1.2 "Improvements" means all excavations, paving, landscaping, utility lines, buildings, and other structures and permanent improvements located on the Land, whether presently in existence or hereafter erected or placed upon the Land, and without regard to whether ownership thereof is in Lessor or Lessee;

1.3 "Land" means ~~Page 9 of 16~~ the Land located in the County of Sacramento, State of California and identified in this Lease as the Primary Site, the Parking Area, and the Access Area, exclusive of any Improvements, notwithstanding that any such Improvements may or shall be construed as affixed to or as constituting part of the real property, and without regard to whether ownership of the Improvements is in Lessor or in Lessee;

1.4 "Master Lease" means the Ground Lease dated January 30, 1969 by and between Bernice Mitchell, Theodore C. Mitchell, and Janet D. Mitchell, jointly as lessor (collectively "Mitchells"), and Gus C. Gianulias, Ernest G. Cheonis, Julie Gianulias, and Merry Cheonis, jointly as lessee (collectively "Gianulias and Cheonis"), the leasehold interest under which was thereafter assigned by Gianulias and Cheonis to Lessor by an Assignment of Lease and Consent dated March 22, 1972, as modified by an Amendment and Modification to Lease dated November 21, 1972 by and between Lessor and the Mitchells and as modified by a Second Amendment and Modification to Lease dated September 14, 1983 by and between Lessor and the Mitchells;

1.5 "Master Lessor" means the Mitchells and their successors and assigns in interest under the Master Lease;

1.6 "Parking Area" means the parcel labeled Parking Lot on Exhibit "A-1" attached hereto and incorporated herein by this reference, subject to relocation by Lessor as provided in Section 2.2;

1.7 "Personal Property" means all furnishings, equipment, inventory, trade fixtures, and other personal property owned by Lessee or by any other person or entity holding an interest in the Premises under Lessee and located, from time to time, on or about the Premises and not included in the definition of Improvements set forth in Section 1.2; and

1.8 "Premises" means collectively the Land and the Improvements.

1.9 "Primary Site" means collectively Lot 7 and Parcel A shown on Exhibit "A-1" attached hereto and incorporated herein by this reference, which Primary Site is also described in Exhibit "A-2" attached hereto and incorporated herein by this reference.

DEMISING PROVISIONS

2.1 Land. Subject to the terms and conditions of this Lease, and for the term set forth in Section 2.4, Lessor hereby leases the Land to Lessee, and Lessee hereby leases the Land from Lessor, subject to the Master Lease and all easements, covenants, conditions, restrictions, leases, assessments, bonds, property taxes, deeds of trust, and other liens and encumbrances disclosed in or by the Official Records of Sacramento County, California. A Title Report respecting the Land dated November 26, 1986 and issued by North American Title Company ("Title Report") is attached hereto as Exhibit "B" and incorporated herein by this reference.

2.2 Relocation and Common Uses. Notwithstanding the provisions of Section 2.1 or any other provision of this Lease, the Parking Area, the Access Area, and the Primary Site are subject to the following provisions:

(a) Lessee's rights respecting, and Lessee's interest in, the Access Area are limited to non-exclusive use thereof for pedestrian and vehicular access between Arcadia Drive and the Parking Area in common with uses thereof by other persons and entities owning or having interests therein from time to time, with Lessor having the right and power, which right and power is hereby reserved, to grant non-exclusive access and easement rights in the Access Area to other persons and entities from time to time in the future and, if desired by Lessor, to relocate the Access Area (at Lessor's cost to relocate and improve) from time to time in the future, provided such relocation does not unreasonably interfere with, and allows continuing fulfillment of, said purposes of the Access Area, namely, for ingress and egress to and from the Parking Area, all in Lessor's absolute and reasonable discretion; and if and when Lessor exercises said right and power, Lessee shall execute and deliver an appropriate amendment to this Lease as Lessor may request. Should parties other than Lessee use the Access Area, then maintenance costs therefor shall be borne equitably in accordance with use.

(b) Although Lessee does have, pursuant to this Lease, the right to possession of the Parking Area, parking of motor vehicles is the only use contemplated or permitted in the Parking Area, and therefore, Lessor reserves the right and power to designate a different area, at any time, and from time to time, in substitution for the Parking Area shown on Exhibit "A-1" to this Lease, together with any necessary and related change or changes in the Access Area, provided such different Parking Area

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is either close to or the same distance from the Primary Site  
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and provided all costs associated with relocating the Parking  
Area and/or improving the such different Parking Area shall be  
borne by Lessor; and if Lessor does designate such different  
area, then, upon request by Lessor, Lessee shall execute and  
deliver an amendment to this Lease that appropriately changes the  
description of the Parking Area and also makes any necessary and  
related change or changes in the Access Area.

(c) Those portions of the Land, including, but  
not limited to, the Primary Site, as are, from time to time,  
designed for ingress and egress or as traffic lanes may be used,  
for ingress and egress, or as traffic lanes, but not for parking,  
for the common benefit of the Land and all other parcels or  
properties now owned or leased or hereafter owned or leased by  
Lessor in the general vicinity of the Land, including, but not  
limited to, all of the premises described in the Master Lease, by  
Lessor and by other persons or entities having, from time to  
time, titles to or interests in all or any portion of said other  
parcels or properties and their lessees, tenants, customers, and  
invitees, and Lessor hereby reserves such rights of non-exclusive  
use in common with Lessee; provided that no such use shall  
unreasonably interfere with Lessee's rights, powers, and  
obligations under this Lease, including, but not limited to,  
Lessee's rights, powers, and obligations respecting construction,  
replacement, rebuilding, and restoration of Improvements as set  
forth in Article VIII.

(d) Lessee agrees to design, construct, and  
maintain those portions of Improvements that are, from time to  
time, located on the Primary Site and designed for ingress and  
egress or as traffic lanes (collectively "Traffic Lane Improve-  
ments") in such configuration as to permit vehicular access  
through the Traffic Lane Improvements between Greenback Lane and  
Parcel D ("Parcel D") and between Arcadia Drive and Parcel D,  
which Parcel D is shown on that certain Parcel Map entitled  
"Parcel Map of Portion of Lots 2 & 3, Aeolia Heights," recorded  
in the office of the Recorder of Sacramento County in Book 10 of  
Parcel Maps, at page 36, subject, however, to the boundary  
adjustment described in Section 2.8 that will reduce the size of  
Parcel D. Lessee acknowledges that the foregoing special rights  
of access through the Traffic Lane Improvements for the benefit  
of Parcel D are necessary, according to representations made to  
Lessee by Lessor, in order to obtain approval of the boundary  
line adjustment described in Section 2.8.

**2.3 Standard Oil Lease.** Without limiting the  
generality of the provisions of Section 2.1, this Lease is made  
subject to a lease of a portion of the Land from Lessor to  
Standard Oil of California ("Standard Oil Lease"). The Standard

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Oil Lease expires in approx Page 42 of 98 September 1, 1987 and contains  
a covenant by Standard Oil of California to remove all of its  
improvements at or about the expiration of the Standard Oil  
Lease. Although this Lease and delivery of possession of the  
Land to Lessee are both subject to the Standard Oil Lease and the  
rights of Standard Oil of California thereunder, Lessee is not  
assuming any of Lessor's rights or obligations under the Standard  
Oil Lease, and Lessor shall continue to have and to bear all of  
those rights and obligations, including, but not limited to, the  
right to collect rent under the Standard Oil Lease until it  
expires and Standard Oil of California has surrendered possession  
of the premises thereunder. Should the Standard Oil Lease not  
terminate, for whatever reason, or should Standard Oil of  
California not surrender possession of the premises on or before  
February 1, 1988, then at Lessee's option, upon written notice to  
Lessor within fifteen (15) days after February 1, 1988, Lessee  
may cancel this Lease.

2.4 Term. The term of this Lease shall be twenty (20)  
years, commencing on May 1, 1987, and expiring on April 30, 2007,  
subject to extension as provided elsewhere in this Lease, and  
subject to earlier termination as provided elsewhere in this  
Lease.

2.5 Extension of Term. Notwithstanding the date  
specified elsewhere in this Lease for expiration of the term of  
this Lease, Lessor hereby grants to Lessee the right and option  
to extend the term of this Lease for two (2) additional periods  
of five (5) years each, subject to the following terms and  
conditions:

(a) Lessee must give Lessor a written notice of  
extension for each such additional period no later than six (6)  
months prior to the expiration of the then existing term of this  
Lease;

(b) Lessee must not be in default under any  
provision of this Lease beyond any applicable cure period set  
forth in this Lease both at the time a notice of extension is  
given and at the time the extension period commences;

(c) As used in this Lease, the phrase "term of  
this Lease" shall include any such period of extension if  
exercised by Lessee; and

(d) All provisions of this Lease shall remain in  
full force and effect and binding on Lessor and Lessee during any  
extension period, except that Lessee shall have no right or  
option to extend the term of this Lease beyond the two (2)  
extension periods described above.

2.6 Master Lease. Lessor warrants and represents to Lessee that Lessor has provided to Lessee a true and correct copy of the Master Lease, and Lessee agrees and acknowledges that it has read said copy of the Master Lease, understands the contents thereof, has had ample opportunity to have said copy reviewed by Lessee's legal counsel, and accepts this Lease and the leasehold interest hereby created subject to the Master Lease, as well to all matters set forth in the Official Records of Sacramento County, California.

2.7 Lease "As Is". Except with regard to responsibility for hazardous or toxic wastes resulting from Standard Oil's use of a portion of the Land and/or removal of its Improvements therefrom as recited herein, Lessee accepts the Land pursuant to Section 2.1 in its present condition "as is" and acknowledges that neither Lessor nor any agent or representative of Lessor has made any representation or warranty concerning the condition of the Land or any Improvements located on the Land at the time the term of this Lease commences or concerning suitability of the Land for any particular use or purpose. Except for removal of certain Improvements as required by the Standard Oil Lease, and except for the boundary line adjustment described in Section 2.8 (as to both of which matters, Lessor shall be responsible to accomplish prior to February 1, 1988), any and all Improvements located on the Land at the time the term of this Lease commences may be used, altered, demolished, or removed as Lessee may, at its election, choose in connection with its construction work described in Article VIII, all at Lessee's sole cost and expense.

2.8 Boundary Line Adjustment. As shown in the Title Report, the current northern boundary line of that portion of the Primary Site that is labeled Parcel A on the map attached hereto as Exhibit "A-1" is presently located approximately forty-five (45) feet south of the southern boundary line of that portion of the Primary Site that is labeled Lot 7 on said map, thus leaving a gap between said two (2) portions of the Primary Site. Lessor agrees to use its best efforts, at Lessor's sole cost and expense, to secure approval by the County of Sacramento of a boundary line adjustment respecting said Parcel A so that its northern boundary line becomes contiguous with the southern boundary line of said Lot 7 as shown by the dotted line on said Exhibit "A-1". If Lessor cannot secure approval of said boundary line adjustment, then Lessor shall use its best efforts, at Lessor's sole cost and expense, to obtain the necessary and appropriate non-exclusive easement to permit Lessee's improvement and use of the area between the northern boundary line of said Parcel A and the southern boundary line of said Lot 7, so that Lessee may proceed with construction of Improvements as set forth

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In Article VIII and use such area to the same extent as Lessee  
could use that area under this Lease had a boundary line  
adjustment been approved by said County. If neither said  
boundary line adjustment nor said easement has been secured or  
obtained by Lessor on or before February 1, 1988, then at  
Lessee's option, upon written notice to Lessor within fifteen  
(15) days after February 1, 1988, Lessee may cancel this Lease.

## ARTICLE III

### RENT

3.1 Minimum Base Rent. In addition to any and all other amounts payable from Lessee to Lessor pursuant to this Lease, Lessee agrees to pay to Lessor, and Lessor agrees to accept from Lessee, as rent for the use and occupancy of the Land, commencing on the Rent Commencement Date (defined below) and continuing throughout the balance of the term of this Lease, a minimum base rent of One Hundred Forty-Five Thousand Two Hundred Dollars (\$145,200.00) per year, subject to adjustments as provided elsewhere in this Lease and subject to payment in advance monthly installments as provided elsewhere in this Lease ("Minimum Base Rent").

3.2 Rent Commencement Date. The term "Rent Commencement Date," as used in this Lease, means the earlier of:

(a) The date that is the first anniversary of the date the term of this Lease commences; or

(b) The date that Lessee opens for business at the Premises or has any Gross Sales (as defined below).

3.3 Monthly Installments. The Minimum Base Rent for each year shall be paid in equal monthly installments, in advance, on the first (1st) day of each calendar month during that year, commencing on the Rent Commencement Date and continuing on the first (1st) day of each calendar month throughout the balance of the term of this Lease. If, however, the Rent Commencement Date is not the first (1st) day of a calendar month, then Lessee shall pay to Lessor, on the Rent Commencement Date, the amount obtained by multiplying the amount of the regular monthly installment by a fraction, the numerator of which is the number of days starting on, and including, the Rent Commencement Date and ending on, and including, the last day of the calendar month in which the Rent Commencement Date occurs, and the denominator of which is thirty (30), so as to prorate, as of the Rent Commencement Date, the monthly installments of Minimum Base Rent. Likewise, if the term of this Lease expires

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On a date that is not the last day of a calendar month, the last  
monthly installment of Minimum Base Rent payable during the term  
of this Lease shall be reduced in order to effect a proration  
thereof as of such expiration date. Said monthly installments of  
Minimum Base Rent shall be paid in lawful money of the United  
States of America at such place or places as Lessor shall  
designate from time to time.

3.4 Percentage Rent. In addition to the Minimum Base Rent, and in addition to all other monetary obligations of Lessee under this Lease, Lessee shall pay to Lessor additional rent ("Percentage Rent") in an amount equal to one-half of one percent (.5%) of the amount by which Gross Sales (as defined below) for any calendar year during the term of this Lease exceeds Twenty Million Dollars (\$20,000,000.00) ("Gross Sales Breakpoint"), subject to adjustments as provided elsewhere in this Lease. If the term of this Lease commences on a date that is not the first (1st) day of a calendar year or expires on a date that is not the last day of a calendar year, then the Percentage Rent shall be appropriately prorated, as of such commencement or expiration of the term of this Lease, by reducing the Gross Sales Breakpoint for the partial calendar year involved proportionately to the number of days in such partial year compared to the number of days in the full calendar year. Neither the Minimum Base Rent nor any other amounts to be paid by Lessee under this Lease shall offset, reduce, or be deductible from the Percentage Rent.

3.5 Gross Sales Defined. The term "Gross Sales," as used in this Lease, is defined to be the total of the selling prices of all merchandise and services sold in or from the Premises by Lessee, its subtenants, licensees, and concessionaires, whether for cash or on credit, excluding therefrom the following:

(a) Sales taxes, use taxes, so-called luxury taxes, consumers' excise taxes, gross receipt taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, when such taxes are added separately to the selling prices of merchandise or services and collected from customers;

(b) Bulk sale of all or substantially all goods on the Premises not in the ordinary course of Lessee's business nor in the ordinary course of the business of any subtenant, licensee, or concessionaire of Lessee;

(c) Sales of fixtures, trade fixtures, equipment or property that is not stock-in-trade;

(d) The selling prices of all merchandise or products returned by customers and accepted for full credit or the amount of credit for discounts and allowances made in lieu of acceptance thereof;

(e) Exchange of merchandise between stores of Lessee where such exchanges are made solely for the convenient operation of Lessee's business and not for the purpose of consummating a sale that has been made at, in, on or from the Premises or for the purpose of depriving Lessor of the benefit of sales that otherwise would be made at, in, on or from the Premises;

(f) Sums and credits received in the settlement of claims for loss of or damage to merchandise;

(g) Interest or sales carrying charges or other charges, however denominated, paid by customers for extensions of credit on sales where not included in the merchandise sales price;

(h) Receipts from warranty or extended warranty policies for servicing or repairing merchandise provided that receipts from the extended warranty policies do not exceed six percent (6%) of all merchandise sales; and

(i) Sales that are uncollectible and written off Lessee's books as uncollectible provided, however, that this deduction or exclusion from Gross Sales shall not exceed one percent (1%) of Lessee's Gross Sales in any calendar year, calculated on a non-cumulative basis, and such deduction or exclusion shall relate only to the sales price and not to any interest, carrying or service charges in connection therewith. If such sales are subsequently collected, then they shall be deemed a part of Gross Sales in the calendar year in which collected.

3.6 Payment of Percentage Rent. Within thirty (30) days after the end of each calendar quarter following the Rent Commencement Date, Lessee shall deliver to Lessor a written statement, certified by Lessee to be correct, showing total Gross Sales for that calendar quarter, and if said total Gross Sales plus Gross Sales for all of the prior calendar quarters of that calendar year exceed the Gross Sales Breakpoint multiplied by a fraction, the numerator of which is the number of said calendar quarters elapsed and the denominator of which is four (4), then Lessee shall include with said statement a payment to Lessor of Percentage Rent for the partial calendar year then elapsed. Within thirty (30) days after the end of each calendar year following the Rent Commencement Date and, if the term of this Lease expires on a date that is not the last day of a calendar

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year, within thirty (30) days of the expiration of the term of  
this Lease, Lessee shall deliver to Lessor a written statement,  
certified by Lessee to be correct, showing total Gross Sales by  
calendar quarters for that calendar year, together with payment  
by Lessee to Lessor of the balance, if any, of Percentage Rent  
for that entire calendar year not previously paid. If, at the  
time said yearly statement is delivered to Lessor, it shows that  
the total of quarterly payments of Percentage Rent made  
previously during that calendar year exceeds Percentage Rent for  
the entire calendar year, the excess shall be credited to Minimum  
Base Rent or Percentage Rent next becoming due under this Lease  
but shall not be credited to any other monetary obligations of  
Lessee under this Lease.

3.7 Bookkeeping and Inspection. Lessee shall keep  
full, complete and proper books, records and accounts of its  
daily Gross Sales, both for cash and on credit, whether by Lessee  
or by sublessees, concessionaires or licensees of Lessee. Such  
books, records and accounts shall be kept at the Premises or at  
Lessee's West Coast Division office or at such other place as  
Lessor may approve in writing. Lessor and its agents, employees  
and representatives shall have the right at any and all times,  
during regular business hours, and upon no less than ten (10)  
days written notice, to examine, inspect and copy all such books,  
records and accounts, including any sales or use tax reports or  
returns pertaining to the business of Lessee conducted in, upon  
or from the Premises for the purpose of investigating and  
verifying the accuracy of any statement of Gross Sales. Lessor  
may once in any calendar year cause an audit of the business of  
Lessee to be made by an accountant of Lessor's selection, and if  
a statement or statements of Gross Sales previously delivered to  
Lessor shall be found to be inaccurate, then there shall be an  
adjustment, and one party shall pay to the other on demand such  
sums as may be necessary to settle in full the accurate amount of  
said Percentage Rent that should have been paid for the period or  
periods covered by such inaccurate statement or statements.  
Lessee shall keep all said records for three (3) years. If said  
audit shall disclose an inaccuracy in favor of Lessee of greater  
than a two percent (2%) error with respect to the amount of  
Percentage Rent paid by Lessee for the period that was audited,  
then Lessee shall immediately pay to Lessor the reasonable cost  
of such audit; otherwise, the cost of such audit shall be paid by  
Lessor. If such audit shall disclose any willful inaccuracies,  
this Lease may thereupon be cancelled and terminated at the  
option of Lessor.

3.8 Adjustments. The Minimum Base Rent and the Gross  
Sales Breakpoint shall each increase periodically during the term  
of this Lease as follows: Effective at the beginning of the  
sixth (6th), eleventh (11th), sixteenth (16th), twenty-first

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(21st), and the sixth (26th) years of the term of this Lease,  
the Minimum Base Rent and the Gross Sales Breakpoint shall each  
increase and become fifteen percent (15%) more than it was during  
the immediately preceding five (5) year period.

3.9 Interest on Arrearages. Lessee agrees to pay to Lessor interest on any monthly installment of Minimum Base Rent and Percentage Rent not paid when due and upon all other amounts becoming due to Lessor under this Lease, whether or not such amounts constitute rent, which interest shall accrue from the date the rent or other amount becomes due and continue until the rent or other amount is paid in full. Said interest shall become due and payable daily as it accrues, without necessity of demand for payment, and shall be calculated at the rate of ten percent (10%) per annum; provided, however, that no such interest shall be due or payable for any default that is cured within any applicable cure period set forth in this Lease. Lessor may apply all payments received under this Lease first to interest accrued and payable, and second to delinquent rent and other monetary obligations.

## ARTICLE IV

### PROPERTY TAXES

4.1 Definition. For purposes of this Lease, the term "Property Taxes":

(a) means and includes all taxes, assessments, and other governmental charges of every kind and nature whatsoever, whether general or special, ordinary or extraordinary, including, but not limited to, assessments for public improvements or benefits, that have been heretofore or shall be during the term of this Lease (i) assessed, levied, or imposed upon, or become due and payable and a lien upon, the Premises or any part thereof; or (ii) assessed, levied, or imposed by reason of the use or occupancy or change in ownership of the Premises or any part thereof; or (iii) assessed, levied, or imposed upon this Lease or Lessee's rental obligations or Lessor's right to receive rents or other sums under this Lease; or (iv) assessed, levied, or imposed by reason of Lessor's or Master Lessor's ownership or interest in all or any part of the Premises, this Lease, or rents or other sums accruing under this Lease, including, but not limited to, a tax or excise on rents; or (v) assessed, levied, or imposed in lieu of any of the foregoing taxes, assessments, or other governmental charges; but

(b) does not mean or include franchise, estate, inheritance, successor, capital levy, transfer, net income, or

(c) if, at any time during the term of this Lease, any portion of the Premises is jointly assessed, for property tax purposes, with other real property that is not a part of the Premises, then Lessor shall make a reasonable allocation of the taxes, assessments, or other governmental charges that are assessed, levied, or imposed thereon, and only the portion thereof reasonably attributable to the Premises or some portion thereof shall be deemed Property Taxes payable by Lessee as set forth in Section 4.2, which allocation may be based upon any and all records, memoranda, and notes available at the Assessor's Office, calculations of respective square footage, evaluation of respective permanent improvements and uses, and other relevant evidence available to Lessor at no substantial cost or provided by Lessee.

4.2 Payment. Lessee agrees to pay to Lessor, not later than thirty (30) days before the delinquency date or dates of the appropriate governmental authority or authorities, as rent additional to all other rent reserved in this Lease, all Property Taxes (as defined above) for each fiscal tax year or portion thereof that is within the term of this Lease, prorated between Lessor and Lessee for each fiscal tax year that is not entirely within the term of this Lease in the same ratio as the number of days of such fiscal tax year that are within the term of this Lease bears to the number of such days that are outside the term of this Lease. With respect to Property Taxes that may, under the laws then in force, be paid in installments, Lessee shall be required to pay hereunder only such installments as Lessor shall be required by law or by the Master Lease to pay, prorated between Lessor and Lessee for partial fiscal tax years as above provided. In the event that Lessee fails to pay to Lessor any Property Taxes thirty (30) days before delinquency, Lessor shall have the right and option, but no obligation, to pay such Property Taxes or any portion thereof before or after the delinquency date and any and all fines, penalties, and interest thereon, and Lessee agrees to reimburse Lessor immediately for the total amount so paid by Lessor, as rent additional to all other rent reserved in this Lease. In the event that Lessor has paid, before the date the term of this Lease commences, any Property Taxes or installment thereof for a fiscal tax year or portion thereof that is in part within the term of this Lease, Lessee agrees to pay to Lessor, on the date the term of this Lease commences, Lessee's prorata portion thereof.

4.3 Jointly Assessed Properties. With respect to any Property Taxes attributable to a portion of the Premises jointly assessed with other real property that is not a part of the

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Premises, Lessor shall pay, ~~Page 20 of 73~~ the payment of, all such  
jointly assessed taxes before any fine, penalty, interest, or  
cost may be added thereto or become due or be imposed by  
operation of law for the nonpayment or late payment thereof,  
whether or not such payment should have been made by a tenant or  
other third party, provided that Lessee has paid to Lessor its  
share thereof as required by this Lease. If Lessee has paid its  
share of such jointly assessed taxes and Lessor fails to pay, or  
cause to be paid, as above provided, the total of such jointly  
assessed taxes, then Lessee shall have the right to cure by  
payment of such jointly assessed taxes and may deduct the cost  
thereof, plus interest at the highest legal rate, from the next  
installment of Base or Percentage Rent due hereunder.

**4.4 Personal Property Taxes.** Lessee agrees to pay, or  
cause to be paid, directly to the taxing authority or authorities  
before delinquency any and all taxes that are levied or assessed  
upon Personal Property. If any such taxes are assessed, levied,  
or imposed upon Lessor or upon all or any part of the Premises or  
of Lessor's or the Master Lessor's interest in the Premises or  
this Lease, or if such taxes become a lien upon or may be  
enforced against Lessor or the Master Lessor or all or any part  
of the Premises or against Lessor's interest in the Premises or  
in this Lease, Lessor shall have the right and option, but no  
obligation, to pay such taxes or any portion thereof before or  
after the delinquency date, and Lessee agrees to reimburse Lessor  
immediately therefor, including, but not limited to, any and all  
late payment penalties or fines and interest paid by Lessor, as  
rent additional to all other rent reserved in this Lease.

**4.5 Contests.** Nothing herein shall prevent Lessee  
from contesting, and Lessee may contest and institute all  
proceedings reasonably necessary to contest, in good faith, the  
validity or amount of any Property Taxes, provided Lessee  
protects the Premises and the interests of Lessor and the Master  
Lessor, either by arranging with Lessor for the payment by Lessee  
of the Property Taxes under protest not later than thirty (30)  
days before delinquency or by a surety bond.

## ARTICLE V

### INDEMNITY AND INSURANCE

**5.1 Indemnity.** Except if arising from the active  
negligence of Lessor (or the Master Lessor, if applicable) or its  
or their agents or employees, Lessee agrees to indemnify Lessor  
against and hold Lessor harmless and free from any and all  
liability, loss, cost, expense, or obligation (including without  
limitation reasonable attorneys' fees, court costs, and other

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expenses, wheth<sup>er</sup> or not taxable<sup>or incurred</sup>, Lessor or by the  
Master Lessor in defending itself against claims or otherwise  
connected therewith) on account of or arising out of, and this  
Lease is made on the express condition that Lessor and the Master  
Lessor shall not be liable for, or suffer loss or incur any  
liability by reason of, injury to or death of any person or  
persons or damage to or loss of use of property, from whatever  
cause in any way connected with the condition or use of the  
Premises or the Personal Property or connected with activities of  
Lessee or of any of its employees, agents, invitees, contractors,  
or licensees, including, without limitation, any and all  
liability for injury to or death of, or damage to or loss of the  
use of the property of, Lessee or any of Lessee's employees,  
agents, invitees, contractors, or licensees.

**5.2 Liability Insurance.** Lessee agrees to procure and maintain, at its sole cost and expense, during the term of this Lease, comprehensive public liability insurance insuring against liabilities related to the condition of or use of the Premises with limits not less than One Million Dollars (\$1,000,000.00) for bodily injury or death and Five Hundred Thousand Dollars (\$500,000.00) for damage to or loss of use of property (subject to periodic increases as provided below), specifically (a) insuring performance by Lessee of its indemnify obligations under Section 5.1, (b) providing that the coverage is primary and that any coverage that Lessor or the Master Lessor may maintain shall be in excess thereof, (c) naming Lessor and the Master Lessor as additional insureds, (d) providing that the policy cannot be cancelled or modified without twenty (20) days' prior written notice to Lessor and the Master Lessor, and (e) including a cross-liability or severability-of-interests endorsement in the event that the basic policy obtained by lessee does not contain such a provision. Neither the maintenance nor the amount of any such public liability insurance shall be construed to limit in any way Lessee's obligations under any indemnity or hold harmless agreement set forth in this Lease. At the request of Lessor, the amount of said public liability insurance shall be increased periodically as may be reasonable from time to time based upon such criteria as inflation, size of jury verdicts in general, experiences at the Premises respecting public liability, and customary practices in first-class shopping centers in the Sacramento, California area.

**5.3 Property Insurance.** Lessee agrees to procure and maintain, at its sole cost and expense, during the term of this Lease standard form fire, extended coverage, vandalism, malicious mischief, and special extended coverage insuring the Improvements in an amount at least equal to the full replacement cost thereof. Said policy or policies shall specifically (a) be issued for the benefit of Lessor, Lessee, and any mortgagee or

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beneficiary of a deed of trust or of a lease therein as  
their interests appear, and (b) prohibit cancellation or  
modification by the insurer without twenty (20) days' prior  
written notice to Lessor and any such mortgagee or beneficiary.  
Provided, however, that if, and only so long as, Lessee has a  
reported net worth of not less than One Hundred Million Dollars  
(\$100,000,000.00), Lessee may maintain such insurance with  
commercially reasonable "deductible" amounts or may self-insure  
the Improvements.

5.4 General. Each insurance policy required by this Lease to be procured and maintained by Lessee shall be issued by a company approved by Lessor, but may be a part of a blanket policy, which approval Lessor agrees not to withhold unreasonably. Lessee agrees to deliver to Lessor (a) on or before the commencement of the term of this Lease a copy of each such policy, or binder therefor, and a certificate certifying that it contains the provisions required by this Lease, and (b) upon each renewal thereof not later than five (5) days prior to the expiration of the policy. Lessor and Lessee hereby waive any and all rights of recovery against each other for any loss or damage to the Premises or the contents contained therein on account of fire or other casualty to the extent the loss is covered by property insurance maintained by Lessor or Lessee; and each party's policies of insurance applicable to the Premises shall contain appropriate provisions recognizing this mutual release and waiving of all rights of subrogation by the respective insurance carriers.

5.5 Mechanics' Liens. Lessee agrees (a) to pay for all labor and services performed for, and for all materials used by or furnished to, Lessee or any contractor employed by Lessee with respect to the Premises or any part thereof, whether or not such labor, services, or materials were related to trade fixtures or other works of improvement; (b) to indemnify and hold Lessor and the Premises free and harmless from any and all liabilities, claims, liens, encumbrances, and judgments created or suffered in connection with such labor, services, or materials; and (c) to permit Lessor and the Master Lessor to post and maintain notices of nonresponsibility on the Premises in accordance with California Civil Code Section 3094 or other similar statute hereafter enacted. Nothing herein shall prevent Lessee from contesting in good faith the validity or amount of any lien, claim, encumbrance, or judgment, provided that, in the case of a mechanics' or materialman's lien, Lessee obtains and records an appropriate bond as provided by law to remove the record lien created thereby.

USE OF PREMISES

6.1 Permitted Uses. Lessee shall use the Premises only for conduct of its usual retail business of selling to the public home appliances, consumer electronic goods and furnishings, and equipment with incidental service, installation in motor vehicles, and storage of same, all in such manner as to maximize Gross Sales and for no other purpose whatsoever without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed; except that uses of the Access Area and the Parking Area are further limited as set forth in Section 2.2. Lessee acknowledges that, by reason of Lessee's covenant to pay Percentage Rent, Lessor has a legitimate, economic interest in the nature and extent of business conducted by Lessee on or about the Premises, and that default by Lessee with respect to any of its agreements contained in this Section 6.1 shall constitute a material breach of this Lease by Lessee for which Lessor may, at its option, and in addition to all other remedies available, terminate this Lease. Without limiting the generality of the foregoing agreement by Lessee to conduct its business at the Premises in such manner as to maximize Gross Sales, Lessee agrees specifically to comply constantly throughout the term of this Lease with the following requirements respecting use of the Premises:

(a) To be open for business on all such days of the year and for such hours in each day as the majority of Lessee's stores are open and for such hours as shall be consistent with Lessee's reasonable business judgment as a national retail chain;

(b) To keep the Premises well-stocked with appropriate merchandise and operated and managed by adequate numbers of competent personnel consistent with Lessee's reasonable business judgment as a national retail chain;

(c) To advertise in newspapers and magazines, by direct mail, and on radio and television in the local market area and to evaluate the results of such advertising so as to make appropriate changes in the nature of such advertisements and to achieve a good mix of media used;

(d) To conduct periodic "sales" of merchandise for the purpose of attracting new customers;

(e) Generally to conduct business in such a manner as is customary and to be competitive within Lessee's industry; and

(f) Not to open or operate, or be affiliated, either directly or indirectly, with, a competing store within a three (3) mile radius of the Premises.

**6.2 Prohibited Uses.** Lessee agrees not to do or permit anything to be done on or about the Premises and agrees not to bring or keep anything thereon that constitutes a violation of Section 6.1 or a nuisance or constitutes waste or damages the Premises or any part thereof.

**6.3 Compliance with Law.** Lessee agrees to comply promptly, at its sole cost and expense, with the requirements of all municipal, state, federal, and other governmental authorities now or hereafter in force, whether such requirement is imposed by statute, ordinance, rule, regulation, or judicial or administrative order, decree, or judgment or otherwise, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Premises or any part thereof. Lessee, at its sole cost and expense, may contest, by appropriate legal proceedings, the validity of any law or regulation if operation of the law or regulation can be suspended until final determination of its validity or application without subjecting Lessor to liability.

**6.4 Good Condition.** Lessee acknowledges that neither Lessor nor any agent or representative of Lessor has made any representation or warranty with respect to the Land or the Improvements, or any part thereof, nor has Lessor agreed to undertake any modification, alteration, or improvement to the Land or any part thereof except as expressly provided in this Lease. The taking of possession of the Land by Lessee shall conclusively establish that the Land was at that time in satisfactory condition.

**6.5 Utilities.** Lessee agrees to pay for all water, natural gas, electricity, telephone, and other utilities and services supplied to the Premises together with any and all taxes thereon, and for any and all hook-up charges and cost of installation of utility lines.

**6.6 Entry by Lessor.** In addition to any and all other rights of entry granted or reserved to Lessor by this Lease, Lessee agrees to permit Lessor, its agents, representatives, and appraisers, and prospective purchasers and lenders to enter the Premises at all reasonable times (a) to post notices of nonresponsibility; (b) to place upon the Premises any usual "For Lease" or "For Sale" signs at any time within six (6) months prior to the expiration of the term of this Lease; or (c) upon no

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less than ten (10) days not ~~Page 25~~ less than ten (10) days not Page 25 due to Lessee, and without unreasonable  
able interruption of Lessee's normal business activities,  
generally to inspect the Premises to evaluate their condition and  
to determine whether Lessee is in compliance with the provisions  
of this Lease.

## ARTICLE VII

### MAINTENANCE AND REPAIRS

7.1 Lessor's Obligations. Lessor shall have no obligation whatsoever to maintain or repair the Premises or any portion thereof.

7.2 Lessee's Obligations. Subject to the provisions of Article IX, Lessee agrees to keep and maintain in good and sanitary order, condition, and repair, including replacements as needed, at Lessee's sole cost and expense, the Premises and every part thereof, including, but not limited to, the roof, exterior, interior, foundation, structural parts, operational parts, paving, and landscaping. Lessee expressly waives the benefit of any law, whether by statute, judicial decision, ordinance, or otherwise, now or hereafter in effect, that would otherwise accord Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Premises or any portion thereof in good order, condition, or repair.

7.3 Default by Lessee. If Lessee fails to maintain the Premises as required by Section 7.2, Lessor may, but shall have no obligation to, enter the Premises to do, or to permit its contractors or agents to do, such acts at the expense of Lessee as are reasonably required to perform the maintenance or repair work required of Lessee, provided that, except in the case of an emergency involving imminent danger to persons or property, Lessor shall not have a right to do such work until the expiration of thirty (30) days from the date Lessor gives Lessee notice that it intends to enter to perform such maintenance or repair work. Any amount so expended by Lessor shall be paid by Lessee to Lessor promptly upon demand, and shall be additional rent hereunder. Lessor shall have no liability to Lessee for any loss or damage suffered by Lessee resulting from Lessor's performance of such maintenance or repair work.

7.4 Surrender. Upon the expiration or termination of the term of this Lease, Lessee shall surrender the Land and Improvements to Lessor, all in good condition, ordinary wear and tear excepted, and, subject to the provisions of Articles IX and X, casualty and condemnation losses excepted, at which time, and

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upon such surrende<sup>r</sup>, fee title to the Land and the Improvements shall automatically pass to Lessor. Lessee agrees to execute, acknowledge, and deliver to Lessor such quitclaim deed and such other instruments and documents as Lessor shall reasonably request in order to assure and show of record Lessor's fee title to the Land and the Improvements free of any interest or claim of Lessee.

## ARTICLE VIII

### CONSTRUCTION OF IMPROVEMENTS

8.1 Retail Facility. Lessee agrees, at its sole cost and expense, and commencing immediately after the term of this Lease commences, and subject to the requirements of Section 8.2, to design and build, using such licensed architects, engineers, contractors, and other experts Lessee shall select, on the Land a retail facility ("Retail Facility") that is appropriate for conduct of Lessee's business, which Retail Facility shall include, but is not limited to, a building consisting of approximately thirty thousand (30,000) net usable square feet and a vehicle parking area and access as required by local governmental authorities, all in general conformity with the Concept Plan attached hereto as Exhibit "C" and incorporated herein by this reference. The Retail Facility shall be part of the Improvements as defined in this Lease. Subject to force majeure, Lessee agrees to use its best efforts to complete construction of the Retail Facility, open for business, and have Gross Sales, all before the Rent Commencement Date.

8.2 Construction in General. In addition to Lessee's obligation to build the Retail Facility on the Land as set forth in Section 8.1, Lessee may, from time to time, but shall not be obligated to, construct additional Improvements upon the Land, alter and make additions to Improvements on the Land, and replace obsolete Improvements on the Land, provided that all such construction and the initial building of the Retail Facility, as well as any rebuilding or restoration of damaged or destroyed Improvements under Article IX, shall comply with the following requirements:

(a) All such Improvements shall be designed and constructed in a good and workmanlike manner and in accordance with plans and specifications that have been previously reviewed and approved in writing by Lessor, which approval Lessor agrees not to withhold or delay unreasonably; provided, however, that alterations, replacements, or additions to Improvements (not including initial construction of the Retail Facility) shall require written approval by Lessor only if they are structural in nature or if the cost of construction thereof, at any one time,

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Page \$20000.00) as adjusted from time  
exceeds Fifty Thousand Dollars (\$20000.00) as to time based upon changes, measured from the commencement of the  
term of this Lease, in the Consumer Price Index, all items, for  
All Urban Consumers, as periodically published by the Department  
of Labor, Bureau of Labor Statistics, U.S. City Average;

(b) The design and construction of all such Improvements shall comply with all laws, rules, and regulations of those governmental bodies and agencies asserting jurisdiction over the Premises;

(c) Lessee shall diligently prosecute such construction so that all such Improvements are completed within a reasonable time after construction commences; and so as to cause the least amount of delay respecting or interference with, the generation of maximum Gross Sales;

(d) The entire cost of construction of all such Improvements, including, but not limited to, any off-site work, plans and specifications, and all permits, fees, and licenses therefor, shall be paid by Lessee; and

(e) In the event of a required dedication for public use of a part of the Land in connection with construction of such Improvements, Lessor agrees to join with Lessee, at Lessee's request, in such dedication.

**8.3 Personal Property.** Personal Property may be removed from the Premises by Lessee at any time during the term of this Lease and shall be removed from the Premises by Lessee upon the expiration or termination of the term of this Lease. Lessee agrees promptly to repair, at its sole cost and expense, any damage or injury to the Premises or any part thereof that is caused by any such removal.

**8.4 Title to Improvements.** Improvements constructed at Lessee's sole cost and expense shall be the property of Lessee during the term of this Lease, and title thereto shall automatically pass to Lessor at the expiration or termination of the term of this Lease.

**8.5 Permits or Approvals.** Lessor agrees to join with Lessee, at Lessee's request, as required for any permit applications and other governmental approvals related to Lessee's construction of Improvements, at no cost or expense to Lessor.

DESTRUCTION

9.1 Duty to Rebuild. In the event that Improvements are damaged or destroyed in whole or in part by any casualty, whether or not covered by insurance, and subject to the provisions of Section 9.3, Lessee shall forthwith, and in accordance with the requirements of Article VIII, rebuild or restore them to their prior condition with such alterations as Lessee may desire, subject to compliance with Article VIII, which rebuilding or restoration Lessee shall complete within a reasonable period of time, but in no event, subject to force majeure, later than twelve (12) months after commencement thereof. Lessee shall be entitled to receive any property insurance proceeds available to reimburse Lessee for the costs and expenses incurred.

9.2 No Abatement of Rent. There shall be no abatement of rent by reason of damage to or destruction of the Premises in whole or in part. Lessee hereby expressly waives the provision of Section 1932, Subdivision 2, and Section 1933, Subdivision 4, of the California Civil Code, and all present and future amendments thereto, and all other laws, whether now or hereafter in force, that would permit or cause termination of a lease or abatement of rental obligations upon damage to or destruction of the property subject thereto.

9.3 Destruction Near End of Term. Notwithstanding any other provision of this Article IX, if, as a result of any casualty that occurs during the last two (2) years of the term of this Lease, the Improvements are destroyed or so severely damaged as to have a material impact on Lessee's ability to conduct business, as reasonably determined by Lessee, Lessee may elect, by giving written notice to Lessor no later than sixty (60) days after such casualty occurs, to terminate this Lease, effective on the date said notice is given. If Lessee does so elect to terminate this Lease, then Lessee shall have no duty to rebuild or restore the Improvements under Section 9.1, and Lessee shall promptly execute and deliver to Lessor all instruments and documents that may be appropriate to insure that Lessor receives all related insurance proceeds, and Lessee shall pay to Lessor the amount of any "deductible" amount or amounts under such insurance and any and all amounts that, but for such termination of this Lease by Lessee, would have been paid by Lessee for rebuilding, reconstruction, or repairs under Lessee's self-insurance plan.

CONDEMNATION

10.1 Definitions of terms. For the purposes of this Lease, the term

(a) "Taking" means a taking of the Premises or an interest therein pursuant to, or damage related to the exercise of, the power of condemnation and includes a voluntary conveyance to any agency, authority, public utility, person, corporation, or other entity empowered to condemn property in lieu of court proceedings;

(b) "Total Taking" means a Taking of the entire Premises as to prevent or substantially impair the use thereof by Lessee for the uses provided in this Lease;

(c) "Partial Taking" means a Taking of only a portion of the Premises that does not constitute a Total Taking;

(d) "Date of Taking" means the date upon which title to the Premises, an interest therein, or a portion thereof passes to and vests in the condemnor, the date damage related to the exercise of the power of condemnation is suffered, or the effective date of any order for possession if that order is issued prior to the date title vests in the condemnor;

(e) "Award" means the amount of any award made, compensation paid, or damages ordered as a result of a Taking;

(f) "Total Temporary Taking" means a Total Taking for a temporary term;

(g) "Partial Temporary Taking" means a Partial Taking for a temporary term.

10.2 Rights. Lessor and Lessee agree that, in the event of a Taking, all rights between them and in and to an Award shall be as set forth herein, and Lessee shall have no right to any Award except as set forth herein. In no event shall any portion of the Award that is attributable to Lessee's leasehold interest in the Land be paid to Lessee.

10.3 Total Taking. In the event of a Total Taking during the term of this Lease that is not a Total Temporary Taking, (a) the rights of Lessee under this Lease and the leasehold estate of Lessee in and to the Land shall cease and terminate as of the Date of Taking, (b) Lessor shall refund to Lessee any prepaid rent prorated as of the Date of Taking,

(c) Lessee shall pay to Lessor any rent or other sums due to Lessor under this Lease prorated as of the Date of Taking, with no further obligations thereafter accruing under this Lease, (d) Lessee shall receive from the Award those portions of the Award that are attributable to (i) the value of, and paid as compensation for, Lessee's interest in the Improvements, (ii) removal and relocation of Personal Property, and (iii) any special damages to Lessee, such as for loss of business goodwill or business moving expenses, and (e) the remainder of the Award, which shall include the unencumbered fee value of the Land, shall be paid to Lessor, all subject, of course, to the rights of the Master Lessor under the Master Lease or by law.

**10.4 Partial Taking.** In the event of a Partial Taking during the term of this Lease that is not a Partial Temporary Taking, (a) the rights of Lessee under this Lease and the leasehold estate of Lessee in and to the portion of the Land taken shall cease and terminate as of the Date of Taking, with no further obligations thereafter accruing under this Lease with respect to that portion, (b) from and after the Date of Taking the Minimum Base Rent shall be adjusted to be equal to the product obtained by multiplying the then Minimum Base Rent under this Lease by the quotient obtained by dividing the fair market value of the Land still subject to this Lease after the Taking by the fair market value of the Land prior to the Taking, (c) Lessee shall only receive from the Award those portions of the Award that are attributable to (i) the value of, and paid as compensation for, Lessee's interest in the Improvements, (ii) removal and relocation of the Personal Property, and (iii) any special damages to Lessee, such as loss of business goodwill or business moving expenses (d) the remainder of the Award, which shall include the unencumbered fee value of the portion of the Land taken, shall be paid to and be the property of Lessor, and (e) Lessor agrees to use whatever severance damages it receives by reason of the Partial Taking, to pay the cost of restoring, if necessary after all severance damages received by Lessee have been expended to pay the cost of restoring, any Improvements that are a part of the portion that is not taken if the Partial Taking causes such Improvements to be no longer reasonably suitable for the use and occupancy by Lessee contemplated hereunder, fully restored, provided that such severage damages are available to Lessor and Lessee and are not taken by a mortgagee under a mortgage or beneficiary of a deed of trust, all subject, of course, to the rights of the Master Lessor under the Master Lease or by law.

**10.5 Short-Term Temporary Taking.** In the event of a Total or Partial Temporary Taking during the term of this Lease for a period ending on or before the expiration of the term of this Lease: (a) this Lease shall continue in full force and

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effect, (b) that portion of ~~Page 31 of 73~~ attributable to the rental  
value of the Land for the period of the Total or Partial  
Temporary Taking shall be paid to Lessor and credited by Lessor  
to the Minimum Base Rent, the Percentage Rent, and other sums  
that become due during the period of the Total or Partial  
Temporary Taking, (c) any excess of the Award over the amounts  
paid to Lessor shall be paid to Lessee, and (d) if the portion of  
the Award paid to Lessor under "(b)" above is not sufficient to  
pay the Minimum Base Rent, the Percentage Rent, and other  
obligations of Lessee as they become due during the period of the  
Total or Partial Temporary Taking, the deficiency shall be paid  
by Lessee to Lessor as the Minimum Base Rent, the Percentage Rent  
and other obligations become due.

10.6 Long-Term Total Temporary Taking. In the event of  
a Total Temporary Taking for a period ending subsequent to the  
expiration date of the term of this Lease, (a) the rights of  
Lessee under this Lease and the leasehold estate of Lessee in and  
to the Land shall cease and terminate as of the Date of Taking,  
(b) Lessor shall refund to Lessee any prepaid rent prorated as of  
the Date of Taking, with no further obligation thereafter  
accruing under this Lease, (c) Lessee shall pay to Lessor any  
rent or other sums due to Lessor under this Lease prorated as of  
the Date of Taking, (d) Lessee shall receive from the Award only  
those portions of the Award that are attributable to (i) the  
value of, and paid as compensation for, Lessee's interest in the  
Improvements, (ii) removal and relocation of Personal Property,  
and (iii) any special damages to Lessee, such as for loss of  
business goodwill or business moving expenses, and (e) the  
remainder of the Award, which shall include the unencumbered fee  
value of the Land, shall be paid to Lessor, all subject, of  
course, to the rights of the Master Lessor under the Master Lease  
or by law.

10.7 Long-Term Partial Temporary Taking. In the event of  
a Partial Temporary Taking for a period ending subsequent to  
the expiration of the term of this Lease, (a) the rights of  
Lessee under this Lease and the leasehold estate of Lessee in and  
to the portion of the Land taken shall cease and terminate as of  
the Date of Taking, with no further obligations thereafter  
accruing under this Lease with respect to that portion, (b) from  
and after the Date of Taking the Minimum Base Rent shall be  
adjusted to be equal to the product obtained by multiplying the  
then Minimum Base Rental under this Lease by the quotient  
obtained by dividing the fair rental value of the Land still  
subject to this Lease after the Taking by the fair rental value  
of the Land prior to the Taking, (c) Lessee shall receive from  
the Award only those portions of the Award that are attributable  
to (i) the value of, and paid as compensation for, Lessee's  
interest in the Improvements, (ii) removal and relocation of the

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Personal Property, and (iii) any special damages of Lessee, such  
as loss of business goodwill or business moving expenses, (d) the  
remainder of the Award, which shall include the unencumbered fee  
value of the portion of the Land taken, shall be paid to and be  
the property of Lessor, and (e) Lessor agrees to use whatever  
severance damages it receives by reason of the Partial Taking to  
pay the cost of restoring, if necessary after all severance  
damages received by Lessee have been expended to pay the cost of  
restoring, any Improvements that are a part of the portion that  
is not so taken if the Partial Taking causes such Improvements to  
be no longer reasonably suitable for the use and occupancy by  
Lessee contemplated hereunder, provided that such severage  
damages are available to Lessor and Lessee and are not taken by a  
mortgagee under a mortgage or beneficiary of a deed of trust, all  
subject, of course, to the rights of the Master Lessor under the  
Master Lease or by law.

## ARTICLE XI

### DEFAULT AND REMEDIES

11.1 Default Defined. For the purposes of this Lease,  
the terms "Default by Lessee" and "Lessee's Default" both mean  
the occurrence of any one or more of the following events:

(a) failure of Lessee to pay when due any  
Minimum Base Rent, Percentage Rent, Property Taxes, premiums for  
insurance required to be maintained by Lessee under this Lease,  
or other sums of money required to be paid by Lessee pursuant to  
the provisions of this Lease (hereinafter collectively "Rent and  
Sums Equivalent to Rent");

(b) commencement of any action or proceeding by  
or against Lessee under any federal or state bankruptcy or  
insolvency law or other debtors' relief law, whether now or  
hereafter in force, if such proceedings continued for a period of  
ninety (90) days after such commencement, and provided no law  
then prohibits the treatment of such commencement as a default  
under a lease;

(c) appointment, either voluntarily or  
involuntarily, of a receiver, trustee, keeper, or other person to  
take possession of all or substantially all of the assets of  
Lessee, if such appointment and possession continues for a period  
of ninety (90) days after commencement, and provided no law then  
prohibits the treatment of such appointment as a default under a  
lease;

(d) executing ~~Page 3 of 78~~ of an assignment for the benefit of creditors of all or substantially all of its assets that are available by law for the satisfaction of claims of judgment creditors of Lessee; or

(e) breach by Lessee of any provision of this Lease, except those mentioned in subparts "(a)" through "(d)" of this Section 11.1, not cured within sixty (60) days after Lessor gives Lessee written notice of the breach, or, in the case of breaches reasonably requiring more than sixty (60) days to cure, not cured within a reasonable time after the giving of such notice, provided that the curing of the breach is commenced within said sixty (60) days after the giving of such notice and is diligently prosecuted to completion thereafter.

11.2 Lessor's Right to Terminate. In the event of Default by Lessee, Lessor shall have the right to terminate this Lease and Lessee's right to possession of the Land by giving written notice of termination to Lessee (provided that any notice to quit or of termination of this Lease given pursuant to California law by reason of Lessee's failure to pay any Rent and Sums Equivalent to Rent shall allow Lessee at least ten (10) days from service of said notice to cure such failure, rather than the minimum of three (3) days permitted under California Law) and to recover from Lessee:

(a) the worth at the time of award (computed by including interest at the rate specified elsewhere in this Lease for arrearages) of the unpaid Rent and Sums Equivalent to Rent required to be paid by Lessee under this Lease that had been earned at the time of termination;

(b) the worth at the time of award (computed by including interest at the rate specified elsewhere in this Lease for arrearages) of the amount by which the unpaid Rent and Sums Equivalent to Rent required to be paid by Lessee under this Lease that would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

(c) the worth at the time of award (computed by discounting at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%) of the amount by which the unpaid Rent and Sums Equivalent to Rent required to be paid by Lessee under this Lease for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and

(d) any and all amounts necessary to compensate Lessor for detriment proximately caused by the Default by Lessee or which in the ordinary course of events would be likely to result therefrom.

11.3 Lessor's Right Not to Terminate. Unless and until Lessor elects to terminate this Lease and Lessee's right to possession as provided in Section 11.2, this Lease shall continue in full force and effect after Default by Lessee, and Lessor may enforce all of its rights and remedies under this Lease, including, but not limited to, the right to recover or enforce payment of Rent and Sums Equivalent to Rent as they become due under this Lease.

11.4 General. Efforts by Lessor to mitigate damages caused by any Default by Lessee shall not constitute a waiver by Lessor of any of Lessor's rights or remedies under this Lease, and nothing contained in this Lease shall affect the right of Lessor under this Lease to indemnification for liability for personal injuries or property damages arising prior to termination of this Lease. Neither reasonable acts of repair, alteration, maintenance, or preservation of the Premises, nor efforts to relet the Land or Premises, nor the appointment of a receiver or trustee, whether in bankruptcy proceedings or otherwise, upon initiative of Lessor to protect Lessor's interests under this Lease, shall constitute an election by Lessor to terminate this Lease or Lessee's right to possession of the Land. If Lessor permits this Lease to continue in full force and effect after a Default by Lessee, Lessor may, nevertheless, at any time thereafter elect to terminate this Lease and Lessee's right to possession of the Land under the provisions of Section 11.2., for such previous Default by Lessee, provided the Default by Lessee has not then been cured. The rights and remedies of Lessor under this Article XI shall be additional to all other rights and remedies provided to Lessor in this Lease or by law, whether now in force or hereafter enacted, including, but not limited to, injunctions and other equitable relief.

11.5 Lessor's Default. If Lessor shall be in default hereunder, Lessee, after thirty (30) days written notice that Lessee intends to cure such default, or without notice if in Lessee's reasonable judgment an emergency shall exist, shall have the right, but not the obligation, to cure such default, and Lessor shall pay to Lessee upon demand the reasonable cost thereof plus interest at the rate of ten percent (10%) per annum. Except when in Lessee's reasonable judgment an emergency shall exist, Lessee shall not commence to cure any default of such a nature that could not reasonably be cured within such thirty (30) days if Lessor has commenced to cure same within said period so long as Lessor proceeds with reasonable diligence and in good faith to cure such default.

## ARTICLE XII

### ASSIGNMENT AND SUBLETTING

12.1 General Restrictions. No assignment of this Lease or subleasing of the Premises or any part thereof shall be permitted except as provided in this Article XII.

12.2 Consent Required. Lessee shall not, without prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed, assign or encumber this Lease or any interest herein or sublet the Premises or any part thereof or permit use of the Premises by any party other than Lessee. Any of the foregoing acts without such consent shall be void and shall, at the option of Lessor, terminate this Lease. This Lease shall not, nor shall any interest of Lessee herein, be assignable by operation of law without the written consent of Lessor, which consent shall not be unreasonably withheld or delayed.

12.3 Notice to Lessor. If, at any time, or from time to time, during the term of this Lease, Lessee desires to assign this Lease or sublet all or any part of the Premises, Lessee shall give written notice to Lessor setting forth the terms and conditions of the proposed assignment or sublease and the identity of the proposed assignee or subtenant, together with a written statement of the amount of the unamortized book value of Lessee's Improvements. Lessee shall promptly supply Lessor with such information concerning the business background and financial condition of such proposed assignee or subtenant as Lessor may reasonably request. Lessor shall have the option, exercisable by written notice given to Lessee within fifteen (15) days after Lessee's notice is given and other information is given, either to sublet such space from Lessee at the rental and upon the other terms and conditions set forth in this Lease for the term set forth in Lessee's notice, or, in the case of an assignment, to terminate this Lease, and if termination is elected by Lessor, Lessor shall pay to Lessee, upon such termination, the amount of said unamortized book value of Lessee's Improvements. If Lessor does not exercise such option, Lessee may assign the Lease or sublet such space to such proposed assignee or subtenant on the following further conditions: (a) Lessor shall have the right to approve such proposed assignee or subtenant, which approval shall not be unreasonably withheld or delayed; (b) the assignment or sublease shall be on the same terms and conditions set forth in the notice given to Lessor; (c) no assignment or sublease shall be valid, and no assignee or sublessee shall take possession of the Premises, unless and until an executed counterpart of such assignment or sublease has been delivered to Lessor; (d) no

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assignee or sublessee shall have further right to assign or  
sublet except on the terms herein contained; and (e) one-half  
(1/2) of any and all money and other economic consideration, if  
any, received by Lessee as a result of such assignment or  
subletting, however denominated under the assignment or sublease,  
that exceed, in the aggregate, (i) the total sums that Lessee is  
obligated to pay to Lessor under this Lease (prorated to reflect  
obligations allocable to any portion of the Premises subleased),  
plus (ii) any real estate brokerage commissions or fees payable  
in connection with such assignment or subletting, plus (iii) the  
reasonable costs of renovations to the Improvements required in  
order to accomplish the assignment or subletting, shall be paid  
to Lessor as additional rent under this Lease without affecting  
or reducing any other obligations of Lessee hereunder.

12.4 Permitted Assignments and Subletting.

Notwithstanding the provisions of Sections 12.2 and 12.3, Lessee  
may assign this Lease or sublet the Premises, or any portion  
thereof, without Lessor's consent and without extending any  
recapture or termination option to Lessor, to any corporation  
which controls, is controlled by, or is under common control with  
Lessee, or to any corporation resulting from merger or consolidat-  
ion with Lessee, or to any other person or entity which acquires  
substantially all the assets of Lessee's business in Northern  
California as a going concern, provided that (a) the assignee or  
sublessee assumes, in full, the obligations of Lessee under this  
Lease, and (b) Lessee remains fully liable under this Lease.

12.5 Miscellaneous Provisions. No subletting or  
assignment shall release Lessee from Lessee's obligations under  
this Lease or alter the primary liability of Lessee to pay rent  
and to perform all other obligations to be performed by Lessee  
hereunder. The acceptance of rent by Lessor from any other  
person shall not be deemed to be a waiver of Lessor of any  
provision of this Article XII. Consent to one assignment or  
subletting shall not be deemed consent to any subsequent  
assignment or subletting. In the event of default by an assignee  
or sublessee or by Lessee or by any successor to Lessee in the  
performance of any of the terms hereof, Lessor may proceed  
directly against Lessee without the necessity of exhausting  
remedies against such assignee, sublessee, or successor.

12.6 Administrative Fee. If Lessee assigns this Lease  
or sublets the Premises or any part thereof or requests the  
consent of Lessor to any assignment or subletting, then Lessee  
shall, upon demand, pay Lessor an administrative fee of Three  
Hundred and no/100 Dollars (\$300.00) plus any attorneys' fees  
reasonably incurred by Lessor in connection with such act or  
request.

LOAN OR SALE

13.1 Estoppel Certificates, etc. Each party (both Lessor and Lessee) agrees within ten (10) days following request by the other:

(a) to execute and deliver to the requesting party any and all instruments and documents (including an estoppel certificate (i) certifying that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect, and certifying the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of either party hereunder, or specifying such defaults if they are claimed) evidencing the status of this Lease;

(b) in Lessee's case, to deliver to Lessor current, non-confidential certified financial statements of Lessee, including a balance sheet and a profit and loss statement for at least two (2) years, all prepared in accordance with generally accepted accounting principles consistently applied; and

(c) in Lessee's case, to execute and deliver to Lessor written consent of Lessee to any assignment by Lessor of this Lease, provided that the assignee agrees to assume all obligations of Lessor hereunder arising subsequent to the assignment as a part of such assignment and agrees to recognize Lessee's tenancy hereunder.

13.2 Failure to Deliver Estoppel Certificates. If either party shall fail to deliver, within the time required by Section 13.1, any such estoppel certificate, then any third party, such as, but not limited to, a party purchasing assets or lending money, may rely exclusively upon representations and warranties made by Lessor or Lessee, as the case may be, respecting the status of this Lease, and the other party shall be estopped to assert or claim anything respecting the status of this Lease that is contrary to such representations and warranties made by Lessor.

13.3 Liability of Transferee. In the event that Lessor shall sell or otherwise transfer its title to the Land, after the effective date of such sale or transfer, and upon assumption of Lessor's obligations hereunder, whether expressly or by operation

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of law, Lessor shall have no liability under this Lease  
to Lessee except as to matters of liability which have accrued  
and are unsatisfied as of the date of sale or transfer, and  
Lessee shall thereafter seek performance solely from Lessor's  
successor.

13.4 Leasehold Mortgages. Notwithstanding the provisions of Article XII, Lessor and Lessee agree as follows:

(a) Any pledge, mortgage, or encumbrance of this Lease by Lessee or of Lessee's leasehold estate hereunder, as the same may be modified, extended, amended, or replaced, is herein referred to as a "Leasehold Mortgage" or, collectively, as "Leasehold Mortgages," and the holder or holders of Leasehold Mortgages are herein referred to as a "Leasehold Mortgagee" or "Leasehold Mortgagees." The term "Leasehold Mortgage" shall include all instruments executed in connection with a lease-leaseback transaction. Notwithstanding anything to the contrary contained in this Lease, the provisions of this Section 13.4 shall extend only to a Leasehold Mortgagee with respect to which Lessor shall have received the name and address of the Leasehold Mortgagee together with a copy of the Leasehold Mortgage and shall otherwise not be binding on Lessor. The rights granted to Leasehold Mortgagees under this Section 13.4 shall be in addition to, and not in lieu of, other rights, if any, granted to Leasehold Mortgagees under this Lease.

(b) Lessor hereby agrees with and for the benefit of any and all Leasehold Mortgagees and their heirs, personal representatives, successors and assigns:

(i) When giving any notice to Lessee with respect to this Lease or any exercise of any right to terminate this Lease, Lessor will also give a copy of any such notice by registered or certified mail to each Leasehold Mortgagee at the address of each Leasehold Mortgagee as provided to Lessor as required by subsection (a) above, and no such notice to Lessee shall be deemed to have been duly given, nor shall such notice be effective, unless such notice is so given to each Leasehold Mortgagee, the date shown on the return receipt being deemed the date such notice was given.

(ii) Should Lessee default in respect of any of the provisions of this Lease, any Leasehold Mortgagee shall have the right, but not the obligation, to cure such default whether the same consists of the failure to pay Rent and Sums Equivalent to Rent or the failure to perform any other matter or thing which Lessee is required to do or perform under the Lease, and Lessor shall accept performance by or on behalf of Leasehold Mortgagee as though, and with the same effect as if, it had been

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done or performed by Lessee Page 29 of 73  
Leasehold Mortgagee will have a period of time after the giving of such notice to it within which to cure the default specified in such notice, or cause it to be cured, which is the same period for cure, if any, as is given to Lessee under this Lease in respect of the specified default after the giving of such notice to Lessee, plus an additional period of thirty (30) days. In the event of a default which cannot reasonably be cured within said period (which does not include, among others, any default that can be cured by the payment of money, such as, but not limited to, default in the payment of Rent and Sums Equivalent to Rent), the period of time for cure shall be extended for so long as any Leasehold Mortgagee has initiated within said period and is diligently thereafter proceeding to attempt to cure such default.

(iii) After any default by Lessee under the provisions of this Lease that cannot be cured by a party who does not have possession of the Premises ("Possessory Default"), and provided that any and all other defaults by Lessee have been and continue to be cured either by Lessee or by a Leasehold Mortgagee as provided in this Lease or by law, then Lessor agrees not to terminate this Lease by reason of such Possessory Default so long as the Leasehold Mortgagee has commenced, within the cure period set forth in subsection (ii) of this subsection (b) of this Section 13.4, a foreclosure or other appropriate proceedings under the Leasehold Mortgage to acquire possession of, or title to, Lessee's leasehold estate hereunder and thereafter diligently prosecutes said foreclosure or other proceedings to completion; provided that the Leasehold Mortgagee so attempting to obtain possession or title shall deliver to Lessor, no later than sixty (60) days after the expiration of the grace period applicable to such Leasehold Mortgagee as to the particular default, an acknowledged instrument by which such Leasehold Mortgagee undertakes (subject to the limitations of liability set forth below) that:

(A) during the pendency of any such foreclosure or other proceedings and until possession of the Premises shall be obtained by such Leasehold Mortgagee, such Leasehold Mortgagee will pay or cause to be paid to Lessor, when and as it shall become due (but without giving effect to any right of acceleration of rentals in the event of default), the Rent and Sums Equivalent to Rent provided for in this Lease and will perform the other obligations of Lessee under this Lease default under which would not constitute a Possessory Default.

(B) when, as and if possession of, title to, or control over the Premises shall be obtained by such Leasehold Mortgagee, or its successor, whether voluntarily, as a result of Foreclosure (as hereafter defined), or otherwise, such Leasehold Mortgagee or its successor shall (1) thereafter perform

all the covenants or this Lease on Lessee's part to be performed including those that Lessee shall have failed to perform prior to the date on which such title, possession, or control by Leasehold Mortgagee or its successor is obtained, except for those covenants which are not reasonably susceptible of being performed by such Leasehold Mortgagee or its successor, and (2) pay all Rent and Sums Equivalent to Rent accruing thereafter. If the default in respect of which Lessor shall have given any notice contemplated by this subsection (b) shall have been cured and possession of the Premises shall have been restored to Lessee, the undertaking of Leasehold Mortgagee provided for in this subsection (b)(iii) shall automatically terminate and be null and void. No Leasehold Mortgagee shall be required to commence or continue any Foreclosure or other proceedings or to obtain or continue possession of the Premises.

(iv) Anything in subsection (b)(iii) to the contrary notwithstanding, any default of Lessee under any provision of this Lease which is not reasonably susceptible of being cured by a Leasehold Mortgagee or its successor after it obtains title to, possession of, or control over the Premises shall be deemed to have been waived by Lessor upon completion of foreclosure proceedings or when the Leasehold Mortgagee or its successor shall otherwise acquire title to Lessee's leasehold estate. Any default which is reasonably susceptible of being cured after such acquisition shall thereafter be cured with reasonable diligence. Without limiting the generality of the foregoing, as used in this Section a default not "reasonably susceptible" of being cured or performed by a Leasehold Mortgagee or its successor shall include (A) the failure by Lessee to keep books and records and deliver statements as required by this Lease; (B) the inaccuracy or incompleteness of any warranty made by Lessee; (C) any default related to the bankruptcy or insolvency of Lessee; and (D) failure of Lessee to give any notice, certificate, statement, document, or information required by this Lease.

(v) Any Leasehold Mortgagee or its successor may become the legal owner and holder of Lessee's leasehold estate, by foreclosure or other enforcement proceedings, or by obtaining an assignment of this Lease or Lessee's leasehold estate in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding (collectively referred to as "Foreclosure"), without Lessor's consent and without any obligation to assume this Lease, subject to the applicable terms and provisions of this Lease including Leasehold Mortgagee's right to cure any subsequent defaults. Upon Foreclosure, the purchaser at such Foreclosure or the assignee under such assignment in lieu of Foreclosure shall become Lessee, and shall be substituted as the owner and holder

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of the leasehold estate under ~~Page 41 of 73~~ Lease and Lessee's interests  
under this Lease for all purposes, except that nothing herein  
shall be deemed to create any personal liability of the part of  
Leasehold Mortgagee or any such purchaser or assignee for the  
payment of Rent and Sums Equivalent to Rent under this Lease, but  
all other rights and remedies available to Lessor under this  
Lease or by law shall continue in full force and effect as  
against the Leasehold Mortgagee and such purchaser or assignee,  
including, but not limited to, the right to terminate this Lease  
and the right to possession hereunder upon any subsequent default  
as provided in Article XI.

(c) Any notice or other communication which  
Lessor shall desire or is required to give to or served upon any  
Leasehold Mortgagee shall be in writing and shall be served by  
registered or certified mail, addressed to such Leasehold  
Mortgagee at its address as set forth in its notice in writing  
received by Lessor. Any notice or other communication which any  
Leasehold Mortgagee shall desire or is required to give or to  
serve upon Lessor shall be deemed to have been given or served on  
the date shown on the return receipt if sent by registered or  
certified mail addressed to Lessor at Lessor's address as set  
forth in this Lease, or at such other address as shall be  
designated from time to time by Lessor by notice in writing given  
to such Leasehold Mortgagee by registered or certified mail.

(d) Lessor will not modify, amend, cancel or  
accept a surrender of this Lease without the prior written  
consent of all Leasehold Mortgagees. Any such modification,  
amendment, cancellation, or surrender without the written consent  
of all Leasehold Mortgagees shall be void and of no force or  
effect as against such Leasehold Mortgagee, but shall be binding  
and effective between Lessor and Lessee.

(e) The union of the interests of Lessor and  
Lessee shall not result in a merger of this Lease and the  
interests of Lessor in the Premises without the prior written  
consent of all Leasehold Mortgagees. The acquisition of all or  
any portion of Lessor's interest in the Premises, Tenant's  
leasehold estate, or any right or interest in this Lease by any  
Leasehold Mortgagee shall not result in a merger thereof with the  
Leasehold Mortgage held by such Leasehold Mortgagee, unless such  
Leasehold Mortgagee consents thereto in writing.

MORTGAGEE PROTECTION

14.1 Subordination or Superiority. Subject to the provisions of Section 14.2, the rights of Lessee under this Lease are and shall be, at the option of Lessor, either subordinate or superior to any mortgage or deed of trust (including a consolidated mortgage or deed of trust) constituting a lien on Lessor's interest the Land, whether such mortgage or deed of trust has heretofore been, or may hereafter be, executed by Lessor. To further assure the foregoing subordination or superiority, Lessee shall, upon Lessor's request, together with the request of any mortgagee or beneficiary under a deed of trust execute any instrument (including without limitation an amendment to this Lease that does not materially and adversely affect Lessee's rights or duties under this Lease) or instruments intended to subordinate this Lease, or, at the option of Lessor, to make it superior, to any such mortgage or deed of trust.

14.2 Nondisturbance. If Lessor requests, as provided in Section 14.1, that this Lease be made subordinate to any mortgage or deed of trust, then Lessee need not execute any instrument or document intended to effect such subordination unless, concurrently therewith or prior thereto, the mortgagee or beneficiary under the deed of trust enters into a nondisturbance agreement with Lessee in usual and reasonable form that (a) assures Lessee's right to continued possession of the Premises under this Lease after any foreclosure of such mortgage or deed of trust provided Lessee continues to perform all of its obligations under, and is not in default, beyond any applicable cure period, under this Lease, and (b) provides that all casualty and condemnation proceeds shall be applied in accordance with the terms and provisions of this Lease.

14.3 Attornment. Notwithstanding the provisions of Section 14.1, Lessee agrees (a) to attorn to any mortgagee or beneficiary of a deed of trust encumbering Lessor's interest in the Land and to any party acquiring title thereto by, judicial foreclosure, trustee's sale, or deed in lieu of foreclosure, and (b) to execute any attornment agreement reasonably requested by any such mortgagee or beneficiary or by a party so acquiring title to the Land.

14.4 Mortgagee's Right to Cure Lessor's Defaults. In the event of any default on the part of Lessor under this Lease, Lessee agrees to give notice by certified mail to any beneficiary of a deed of trust or mortgagee under a mortgage encumbering the Land, whose address shall have been furnished to Lessee, and offer such beneficiary or mortgagee, except in the case of

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

15.1 Headings. The article and section headings used in this Lease are for purposes of convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

15.2 Waiver. Waiver by Lessor of any breach of any provision of Lease shall not be deemed to be a waiver of such provision or of any subsequent breach of the same or of any other provision of this Lease.

15.3 Notices. Any notice, demand, approval, consent, or other communication required or desired to be given under this Lease in writing shall be personally served or given by overnight express carrier or by mail, and if mailed, shall be deemed to have been given when two (2) business days have elapsed from the date of deposit in the United States mails, certified and postage prepaid, addressed to the party to be served at the last address given by that party to the other under the provisions of this part, and if to Lessee, to the attention of Corporate Secretary. At the date of execution of this Lease, the respective mailing addresses of Lessor and Lessee are those set forth at the beginning of this Lease.

15.4 Attorneys' Fees. In the event that legal proceedings are commenced to enforce or interpret any of the terms or conditions of this Lease, for breach of any such terms or conditions, or to terminate the leasehold interest or right to possession of Lessee granted by this Lease, each party shall waive its right to trial by jury and the prevailing party in any such proceedings shall receive from the losing party such reasonable sum for attorneys' fees and costs incurred, not limited to taxable costs, as may be fixed by the court, in addition to all other relief to which prevailing party may be entitled. If any person not a party to this Lease shall institute an action against Lessee, in which Lessor involuntarily and without cause shall be made a party defendant, Lessee shall indemnify and save Lessor harmless from all liabilities by reason thereof, including reasonable attorneys' fees and all costs incurred by them in such action.

15.5 Successor ~~Page 44 of 73~~ without limiting or otherwise affecting any restrictions on assignments of this Lease or rights or duties under this Lease, this Lease and all of its terms and conditions shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of Lessor and Lessee.

15.6 Holding Over. This Lease shall terminate without further notice at the expiration date of the Term. Any holding over by Lessee after the expiration of the term of this Lease shall not constitute a renewal or extension and shall not give Lessee any rights in or to the Premises or any part thereof except as expressly provided in this Lease. Any holding over after the expiration of the term of this Lease with the consent of Lessor shall be construed to be a tenancy from month to month on the same terms and conditions set forth in this Lease insofar as such terms and conditions can be applicable to a month-to-month tenancy, except that the Minimum Base Rent during such hold-over period shall be an amount equal to one hundred fifty percent (150%) of the then applicable Minimum Base Rent under this Lease.

15.7 Surrender of Lease Not Merger. Neither the voluntary or other surrender of this Lease by Lessee nor a mutual cancellation hereof shall cause a merger of the titles of Lessor and Lessee, but such surrender or cancellation shall operate as an assignment to Lessor of any or all such subleases that have been approved in writing by Lessor.

15.8 Entire Agreement. This Lease sets forth the entire agreement between Lessor and Lessee and supersedes all prior negotiations and agreements, written or oral, concerning or relating to the subject matter of this Lease, and may not be modified except by a writing executed by both parties.

15.9 Recording. Either party shall, upon request of the other, execute, acknowledge, and deliver to the other a short form memorandum of this Lease for recording purposes, such recording to be at the expense of the recording party. In no event shall this Lease, but only a short form hereof so executed that is sufficient to give constructive notice of this Lease, be recorded in the Official Records of Sacramento County, California

15.10 Brokerage Commissions. Lessor and Lessee each warrant and represent to the other that no finder's fee or brokerage commission shall become due or payable by reason of the execution of this Lease or any of the transactions contemplated by this Lease except the amount owed exclusively by Lessee to Steven L. Soboroff and the amount owed exclusively by Lessor to Steven Fishbein.

IN WITNESS WHEREOF, Lessor and Lessee have executed  
this Lease on the dates set opposite their signatures below.

Date: August 31, 1987

"Lessor"

GREENBACK ASSOCIATES

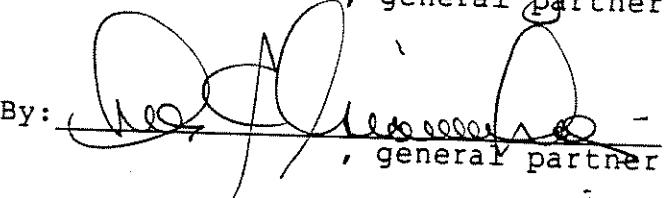
a California general partnership

By:



general partner

By:



general partner

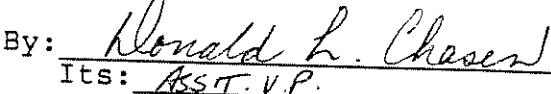
Date: August 21, 1987

"Lessee"

CIRCUIT CITY STORES, INC.

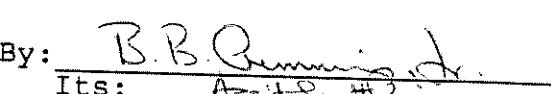
a Virginia corporation

By:



Its: ASST. V.P.

By:



Its: Asst Secy

Concept Plan

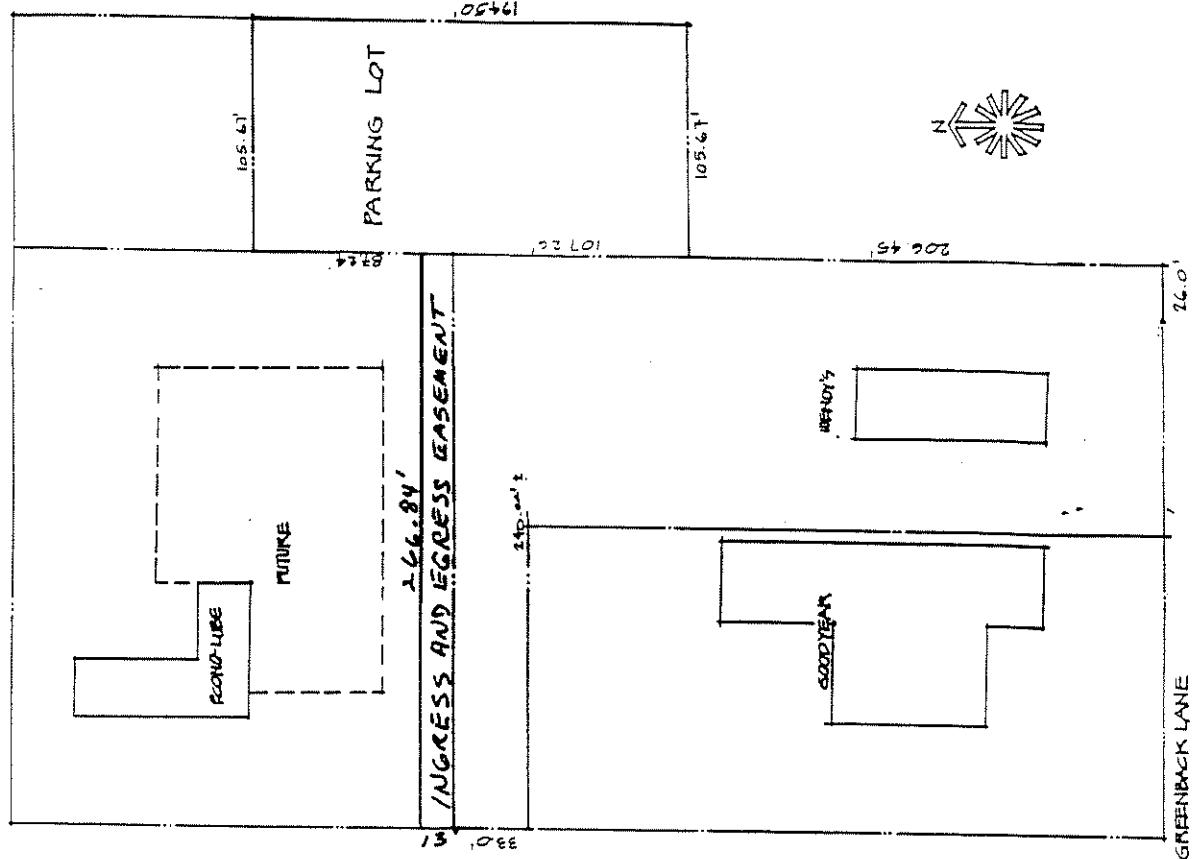


EXHIBIT "A-1"

Lot 7, as shown on the "Plat of Mitchell Farms", recorded in the office of the Recorder of Sacramento County, in Book 139 of Maps, Map No. 16.

Parcel A as shown on that certain Parcel Map entitled "Portion of Lots 2 and 3, Aeolia Heights", filed for record in Book 10 of Parcel Maps at Page 36, Sacramento County Official Records.

TOGETHER WITH and including thereto the following described property:

BEGINNING at a point on the centerline of Arcadia Drive, as shown on that certain Plat entitled "Mitchell Farms", recorded in Book 139 of Maps, Map No. 16, said point also being the Northeast corner of Parcel D as shown on that certain Parcel Map entitled "Portion of Lots 2 and 3, Aeolia Heights", recorded in Book 10 of Parcel Maps at Page 36, Sacramento County Official Records; thence from said point of beginning, South 00° 44' 07" East, 45.00 feet; thence along the South line of Parcel D, said South line also being the North line of Parcel A as shown on said Parcel Map, South 88° 34' 02" West, 130.00 feet; thence North 00° 44' 10" West 45.00 feet to the North line of Parcel D, said North line also being the South line of lot 7 as shown on said Plat of "Mitchell Farms"; thence North 88° 34' 02" East 130.00 feet to the point of beginning.

RESERVING THEREFROM all that real property lying within the rights of way of Greenback Lane and Arcadia Drive, both being County roads.

cc: Bill Hunter, Esq.

Sacramento County

I.O. 7-16-86

IMPORTANT

Greenback Associates  
7700 College Town Drive, #109  
Sacramento, CA  
Attn: Andy Gianulias

When replying refer to  
Our No. 151619-JM  
Escrow Officer: Julie Morotti  
Address: 1565 River Park Drive  
Sacramento, CA 95815  
Phone No: (916) 924-1062  
Your No.:

In Response to the above referenced application for a policy of title insurance, Pioneer Title Company of California, Inc., hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance from Ticor Title Insurance Company of California, describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules Conditions and Stipulations of said policy forms

The Printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth on the attached cover. Copies of the Policy forms should be read. They are available from the office which issued this Report.

This report (and any supplements or amendments thereto) is issued solely for the purpose of facilitating the issuance of a Policy of Title Insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of November 26, 1986, at 7:30 a.m. Title Officer

Stephen R. Olson  
STEPHEN OLSON

This Form of Policy of Title Insurance contemplated by this Report is:

- . ALTA Residential title Insurance Policy - 1979
- . ALTA Loan Policy - 1970 with ALTA Endorsement Form I Coverage (Amended 10-17-70)
- X CLTA Standard Coverage Policy - 1973
- . ALTA Owner's-Policy Form B - 1970 (Amended 10-17-70)

The estate or interest in the land hereinafter described or referred to covered by this Report

Title to said estate or interest at the date hereof is vested in:

**GREENBACK ASSOCIATES, A GENERAL PARTNERSHIP**

At the date hereof exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy form would be as follows:

Code Area :  
Tax Bill No.: Case 08-35653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc  
Land : \$66,673  
Improvements : \$None  
Exemption : \$None

1st Installment : \$503.98 Open  
2nd Installment : \$503.98 Open  
Said Matter Affects : Lot 7

a. General and Special County taxes for the fiscal year 1986-1987:  
Parcel No. : 243-0081-023-0000  
Code Area : 54-444  
Tax Bill No. : 86117276  
Land : \$141,583  
Improvements : \$381,660  
Exemption : \$None

1st Installment : \$2,728.68 Open  
2nd Installment : \$2,728.68 Open  
Said Matter Affects : Parcel D

b. General and special County taxes for the fiscal year 1986-1987:  
Parcel No. : 243-0081-024-0000  
Code Area : 54-444  
Tax Bill No. : 86317374  
Land : \$125,577  
Improvements : \$None  
Exemption : \$None

1st Installment : \$654.87 Open  
2nd Installment : \$654.87 Open  
Said Matter Affects : A portion of Lot 8

c. General and Special County taxes for the fiscal year 1986-1987:  
Parcel No. : 243-0082-003-0000  
Code Area : 54-440  
Tax Bill No. : 86117277  
Land : \$39,165  
Improvements : \$None  
Exemption : \$None

1st Installment : \$199.02 Open  
2nd Installment : \$199.02 Open  
Said Matter Affects : A portion of Lot 8

Code Area : 54-444  
Case No. 108-35653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc  
Land : \$None  
Improvements : \$None  
Exemption : \$None

1st Installment : \$43.63 Open  
2nd Installment : \$43.63 Open  
Said Matter Affects : A portion of Lot 8

e. General and Special County taxes for the fiscal year 1986-1987:  
Parcel No. : 243-0082-005-0000  
Code Area : 54-444  
Tax Bill No. : 86117279  
Land : \$1,412  
Improvements : \$None  
Exemption : \$None

1st Installment : \$7.35 Open  
2nd Installment : \$7.35 Open  
Said Matter Affects : That portion lying within Arcadia Drive

f. General and special County taxes for the fiscal year 1986-1987:  
Parcel No. : 243-0082-006-0000  
Code Area : 54-444  
Tax Bill No. : 86117280  
Land : \$129,271  
Improvements : \$None  
Exemption : \$None

1st Installment : \$674.14 Open  
2nd Installment : \$674.14 Open  
Said Matter Affects : A portion of Parcel B

g. General and Special County taxes for the fiscal year 1986-1987:  
Parcel No. : 243-0082-007-0000  
Code Area : 54-440  
Tax Bill No. : 86173753  
Land : \$245,340  
Improvements : \$223.023  
Exemption : \$None

1st Installment : \$2,442.48 Open  
2nd Installment : \$2,442.48 Open  
Said Matter Affects : A portion of Lot 7

Code Area :  
Tax Bill No. 86117281  
Case No. 08-38653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc

Land : \$41,856  
Improvements : \$None  
Exemption : \$None

1st Installment : \$218.27 Open  
2nd Installment : \$218.27 Open  
Said Matter Affects : A portion of Parcel B

i. General and Special County taxes for the fiscal year 1986-1987:

Parcel No. : 243-0082-024-0000  
Code Area : 54-444  
Tax Bill No. : 86117286  
Land : \$114,498  
Improvements : \$None  
Exemption : \$None

1st Installment : \$597.10 Open  
2nd Installment : \$597.10 Open  
Said Matter Affects : Parcel A

j. Tax Defaulted Property for general and special taxes and subsequent delinquencies  
for the

Fiscal Year : 1983-1984  
Taxing Authority : State of California  
Parcel No. : 243-0082-005-0000  
Tax Sale No. : 83-090156

Amount to pay prior to December 31, 1986 is \$36.34.

Amount to pay prior to January 31, 1987 is \$36.45.

k. "The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California."

l. Any possible outstanding charges for utility services. Amounts may be obtained by contacting the County of Sacramento's Utility Services and Billing Department.

3. A leasehold estate created by that certain lease of said land, executed by and between the parties named herein, for the term and upon the terms, covenants, and conditions therein provided.

Type of Lease	:	Ground Lease
Dated	:	January 30, 1969
Lessor	:	Bernice Mitchell and Theodore C. Mitchell, and Janet D. Mitchell
Lessee	:	Gus C. Gianulias and Ernest G. Cheonis and Julie Gianulias and Merry Cheonis
Term	:	Not shown
Recorded	:	March 3, 1969, in book 6903-03, page 73, Official Records.
Affects	:	The herein described land and other land

An Assignment of Lease

By	:	Gus C. Gianulias, Julie Gianulias, Ernest G. Cheonis and Merry Cheonis, to Greenback Associates, a general partnership
Dated	:	March 22, 1972
Recorded	:	December 21, 1972, in Book 72-12-21, page 554 Official Records

Said lease was amended by an instrument executed by Bernice Mitchell et al and Greenback Associates, recorded September 26, 1983 in Book 8309-26, page 80, Official Records.

4. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In favor of	:	County of Sacramento, a political subdivision of the State of California
For	:	A sanitary sewer
Recorded	:	August 2, 1972, in book 7208-02, page 337 Official Records.
Affects	:	All that portion of Lots 2 and 3, as shown on the official "Plat of Aeolia Heights," described as follows:

AFFECTS CONT... SEE NEXT PAGE

Beginning at a point from which the southeast corner of said Lot 3 bears the  
Case 08-32653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc  
following two courses (1) South 00°44'07" East 220 feet and (2) North 88°34'02"  
Page 54 of 73  
East 59.79 feet; thence from said point of beginning north 00°44'07" West 239.70  
feet; thence curving to the right on an arc of 295.00 feet radius, said arc being  
subtended by a chord bearing North 06°31'13" East 74.51 feet; thence North 13°46'32"  
East 45.00 feet; thence South 76°13'27" East 405.14 feet; thence curvng to the left  
on an arc of 305.00 feet radius; said arc being subtended by a chord bearing South  
80°06'27" East 41.31 feet; thence South 83°59'27" East 237.28 feet; thence North  
06°00'33" East 97.00 feet to an existing sewer manhole and the end of said  
centerline.

5. An easement affecting the portion of said land and for the purposes stated  
herein, and incidental purposes,

In favor of : The County of Sacramento  
For : Public Highway or Road and all necessary utilities  
Recorded : November 22, 1972, in book 7211-22, page 438  
Official Records.  
Affects : The West 60.00 feet of the East 94.79 feet of Lot 3,  
of Aeolia Heights, recorded December 22, 1921 in Book 16 of Maps, Map No. 39 in the  
office of the Recorder of Sacramento County.

Together with all that portion lying Southwesterly of an arc of a curve concave to  
the Northeast with a 25.00 foot radius, the ends of said arc being tangent to the  
North line of the Southerly 30.00 feet of said lot and also being tangent to a line  
parallel to and 34.79 feet West of the East line of Lot 3 said subdivision.

Together with all that portion lying Southeasterly of an arc of a curve concave to  
the Northwest with a 25.00 foot radius, the ends of said arc being tangent to the  
North line of the Southerly 30.00 feet of said lot and also being tangent to a line  
parallel to and lying 94.01 feet West of the East line of Lot 3, said Subdivision.

Affects : Portions of Parcels A, B & D of Parcel Map Book 10,  
page 36, lying within Arcadia Drive.

6. A covenant and agreement

Executed by : Bernice Mitchell, Theodore C. Mitchell and Janet D.  
Mitchell, Greenback Associates, a partnership  
In favor of : Standard Oil Company of California, a Delaware  
corporation  
Recorded : December 21, 1972, in book 7212-21, page 557,  
Official Records.

parties named herein,  
Case#081aa653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc  
Type of Deed : AB page 58, of 932  
Dated : December 21, 1972, in book 7212-21, page 565,  
Lessor : Greenback Associates, a General Partnership  
Lessee : Standard Oil Company of California, a Delaware  
corporation  
Recorded : December 21, 1972, in book 7212-21, page 565,  
Official Records.  
Affects : All that portion of Lot 3, as shown on the official  
"Plat of Aeolia Heights" recorded in the office of the Recorder of Sacramento County  
in Book 16 of Maps, Map No. 39, described as follows:

Beginning at a point on the South line of said Lot 3, from which point of beginning  
the southeast corner of said Lot 3 bears North 88°34'02" East 654.79 feet: thence  
from said point of beginning along said South line of Lot 3 South 88°34'02" West  
130.00 feet: thence North 00°44'07" West 235.00 feet: thence North 88°34'02" East  
130.00 feet: thence South 00°44'07" East 235.00 feet to the point of beginning,  
containing 0.701 acre, more or less.

8. An easement affecting the portion of said land and for the purposes stated  
herein, and incidental purposes,

In favor of : County of Sacramento, a political subdivision of  
the State of California  
For : A drainage pipeline  
Recorded : February 7, 1973, in book 7302-07, page 343  
Official Records.  
Affects : All that portion of Lots 2 and 3, as shown on the Plat  
of Aeolia Heights, described as follows: A strip of land 10.00 feet in width lying  
5.00 feet on each side of the centerline described as follows: Beginning at a point  
from which the Southeast corner of said Lot 3 bears the following two courses: (1)  
South 00°44'07" East 202.00 feet and (2) North 88°34'02" East 64.79 feet; thence from  
said point of beginning along said centerline North 34°02'02" East 170.00 feet.

9. An "Irrevocable Offer to Dedicated" affecting the portion of said land and for  
the purposes stated herein, and incidental purposes,

In favor of : County of Sacramento, a political subdivision of the  
State of California  
For : Any public purpose  
Recorded : February 9, 1973, in book 7302-09, page 350,  
Official Records.  
Affects : See next page

AFFECTS CONT... SEE NEXT PAGE

Plat of said Aeolia Heights, from which point of beginning the Southeast corner of Case 08-35653-KR the DOC 13854g Filed 06/29/09 (Entered 06/29/09 12:41 PM) 9 feet and said Lot 35 bears the D.O.C. 13854g Filed 06/29/09 (Entered 06/29/09 12:41 PM) 9 feet and (2) South 00°13'18" East 30.00 feet; thence curving to the right on an arc of 56.73 feet from said point of beginning along the North line of said Greenback Lane South 88°34'02" West 110.01 feet; thence curving to the left on an arc of 25.00 feet radius, said arc being subtended by a chord bearing North 43°54'57" East 35.14 feet; thence North 00°44'07" West 405.36 feet; thence curving to the right on an arc of 330.00 feet radius, said arc being subtended by a chord bearing North 06°31'13" East 83.35 feet; thence curving to the left on an arc of 20.00 feet radius, said arc being subtended by a chord bearing North 31°13'27" West 28.28 feet; thence North 76°13'27" West 100.00 feet; thence curving to the right on an arc of 530.00 feet radius said arc being subtended by a chord bearing North 72°09'50" West 75.05 feet; thence curving to the right on an arc of 470.00 feet radius, said arc being subtended by a chord bearing North 71°37'21" West 57.69 feet; thence North 75°08'29" West 10.05 feet to a point on the West line of the East one-half of said Lot 3; thence North 00°44'07" West 20.55 feet to the Northwest corner of said East one-half of Lot 3; thence along the North line of said Lot 3 North 88°28'33" East 118.18 feet; thence curving to the left on an arc of 470.00 feet radius, said arc being subtended by a chord bearing South 74°10'32" East 33.60 feet; thence South 76°13'27" East 427.25 feet; thence South 00°30'18" East 61.91 feet; thence North 76°13'27" West 242.53 feet; thence curving to the left on an arc of 20.00 feet radius said arc being subtended by a chord bearing South 58°46'33" West 28.28 feet; thence curving to the left on an arc of 270.00 feet radius, said arc being subtended by a chord bearing South 06°31'13" West 68.20 feet; thence South 00°44'07" East 404.03 feet; thence curving to the left on an arc of 25.00 feet radius, said arc being subtended by a chord bearing South 46°05'02" East 35.57 feet to the point of beginning.

10. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In favor of	: County of Sacramento, a political subdivision of the State of California
For	: A drainage canal, ditch or pipeline
Recorded	: February 9, 1973, in book 7302-09, page 354 Official Records.
Affects	: All that portion of Lot 2, 3, and 6, as shown on the official Plat of Aeolia Heights, described as follows:

AFFECTS CONT... SEE NEXT PAGE

A strip of land 10.00 feet wide  
Case 08-35653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc  
Page 57 of 73  
Beginning at a point on the South line of said Lot 2, from which point of beginning the Southwest corner of said Lot 2 bears South 88°34'02" West 185.09 feet; the from said point of beginning North 00°30'18" West 120.00 feet; thence North 10°00'00" West 290.00 feet; thence North 17°01'30" West 144.56 feet; thence North 14°00'00" West 270.00 feet; thence North 00°30'00" East 285.00 feet, more or less to Arctic Creek.

11. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,  
In favor of : Northeast Sacramento County Sanitation District political subdivision of the State of California  
For : Sanitary sewer  
Recorded : February 9, 1973, in book 7302-09, page 356  
Official Records.  
Affects : All that portion of Lots 2 and 3, as shown on official "Plat of Aeolia Heights," described as follows:

A strip of land 10.00 feet in width lying 5.00 feet on each side of the center line described as follows:

Beginning at a point from which the Southeast corner of said Lot 3 bears the following two courses: (1) South 00°44'07" East 220.00 feet and (2) North 8°13'27" East 59.79 feet; thence from said point of beginning North 00°44'07" West 220.00 feet; thence curving to the right on an arc of 295.00 radius, said arc being subtended by a chord bearing North 06°31'40" East 74.51 feet; thence North 8°13'27" East 45.00 feet; thence South 76°13'27" East 405.14 feet; thence curving to on an arc of 305.00 feet radius, said arc being subtended by a chord bearing North 80°06'27" East 41.31 feet; thence South 83°59'27" East 237.28 feet; thence 06°00'33" East 97.00 feet to an existing sewer manhole and the end of said line.

In favor of : the State of California,  
Case 08-35653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc  
For : A drainage canal, ditto pipeline  
Recorded : Page 58 of 73  
Official Records.  
Affects : February 13, 1973, in book 7302-13, page 631  
All that portion of Lots 2 and 3, as shown on the  
Plat of Aeolia Heights, described as follows:

A strip of land 10.00 feet in width lying 5.00 feet on each side of the center line  
described as follows:

Beginning at a point from which the Southeast corner of said Lot 3 bears the  
following two courses: (1) South 00°44'07" East 262.00 feet and (2) North 88°34'02"  
East 64.79 feet; thence from said point of beginning along said center line North  
88°34'02" East 170.00 feet.

13. An easement affecting the portion of said land and for the purposes stated  
herein, and incidental purposes,

In favor of : Sacramento Municipal Utility District, a municipal  
utility district  
For : Electrical Facilities  
Recorded : April 18, 1973, in book 7304-18, page 353  
Official Records.  
Affects : A portion of Lot 2, as said lot is shown on the  
official Plat of "Aeolia Heights", described as follows:

The route of said right of way shall be within a strip of land of the uniform width  
of 5 feet the South line of which is described as follows:

Beginning at a point on the West line of said Lot 2 from which point the Southwest  
corner of said Lot 2 bears South 00°44'08" East 30 feet; thence from said point of  
beginning North 88°34'02" East 231.21 feet to a point on the East line of Parcel "C",  
as said parcel is shown on that certain parcel map entitled "Portion of Lots 2 & 3,  
Aeolia Heights" recorded in said Recorder's office on February 13, 1973 in Book 10 o  
Parcel Maps at page 36.

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In favor of : Sacramento Municipal Utility District, a municipal  
Case 08-35653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc  
For : EPower50aif Facilities consisting of underground  
conduits, wires and cables with associated above-  
ground or belowground transformers, transformer pads,  
pedestals, service, terminal, splicing, switching,  
pull boxes, switch and fuse cubicles, cubicle pads  
Recorded : April 18, 1973, in book 7304-18, page 355  
Official Records.

Affects : 1. Within a strip of land of the uniform width of 5  
feet the west line of which is described as follows: Beginning at a point on the  
West line of the East One-Half of Lot 3 as said west line is shown on the certain  
Parcel Map entitled "Portion of Lots 2 & 3, Aeolia Heights", recorded in said  
Recorder's office on February 13, 1973, in Book 10 of Parcel Maps at Page 36, from  
which point the southwest corner of said East One-half of Lot 3 bears South 00°44'07"  
East 245 feet; thence from said point of beginning North 00°44'07" West 65 feet to a  
point hereinafter referred to as Point "A".  
2. Within a strip of land of the uniform width of 25 feet the south line of which is  
described as follows: Beginning at said Point "A"; thence from said point of  
beginning North 88°34'02" East 15 feet to a point hereinafter referred to as Point  
"B".  
3. Within a strip of land of the uniform width of 5 feet the south and east lines of  
which are described as follows: Beginning at said Point "B"; thence from said point  
of beginning North 88°34'02" East 221 feet; thence South 00°44'07" East 80.5 feet to  
a point hereinafter referred to as Point "C"; thence South 00°44'07" East 174.81  
feet; thence along the arc of a curve to the right, having a radius of 25 feet,  
subtended by a chord bearing South 43°54'57" West 35.14 feet; thence South 88°34'02"  
West 10 feet.  
4. Within a strip of land of the uniform width of 5 feet the center line of which is  
described as follows: Beginning at said Point "C"; thence from said point of  
beginning South 88°34'02" West 28 feet to a point hereinafter referred to as Point  
"D".  
5. Within a strip of land of the uniform width of 10 feet the center line of which  
is described as follows: Beginning at said Point "D"; thence from said point of  
beginning South 88°34'02" West 10 feet.  
6. Within a strip of land of the uniform width of 5 feet the North line of which is  
described as follows: Beginning at a point on the East line of said Lot 3 from which  
point the Southeast corner of said Lot 3, as said southeast corner is shown on said  
Parcel Map, bears South 00°44'08" East 35 feet; thence from said point of beginning  
South 88°34'02" West 24.25 feet to a point on the easterly line of that certain  
60-foot road right of way recorded in said Recorder's office in Book 72-11-22 of  
Official Records at Page 438.

Dated : April 18, 1972 Page 60 of 73  
Lessor : Greenback Associates  
Lessee : The Goodyear Tire & Rubber Company, an Ohio corporation  
  
Term : Fifteen (15) years  
Recorded : May 3, 1973, in book 7305-03, page 520,  
Official Records.  
  
Affects : All that portion of Lots 2 and 3, as shown on the official "Plat of AEOLIA HEIGHTS", recorded in the office of the Recorder of Sacramento County in Book 16 of Maps, Map No. 39, described as follows:  
Beginning at the southwest corner of said lot 3; thence from said point of beginning along the South line of said Lot 3, South 88°34'02" West 64.79 feet; thence North 00°44'07" West 280.00 feet; thence North 88°34'02" East 170.00 feet; thence South 00°44'07" East 280.00 feet to a point on the South line of said Lot 2; thence along said South line South 88°34'02" West 105.21 feet to the point of beginning; The Westerly 30 feet and the Southerly 30 feet of said parcel shall be relinquished for road purposes whereby said parcel will have a net usable area of 140 feet along Greenback Lane and a depth of 250 feet along an unnamed street to be constructed.

16. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes,

In favor of : The County of Sacramento, a political subdivision of the State of California

For : Traffic control signals

Recorded : July 26, 1973, in book 7307-26, page 411  
Official Records.

Affects : All that portion of Parcel "B" of "Parcel Map" of portion of Lot 2 and 3 Aeolia Heights" recorded February 13, 1973, in Book 10 of Parcel Maps, at page 36, in the office of the recorder of Sacramento County, described as follows:

BEGINNING at a point on the easterly right of way line of Arcadia Drive located North 00°44'07" West 70.30 feet and North 88°34'02" East 30.0 feet from the intersection of the centerline of Greenback Lane and the centerline of Arcadia Drive; thence from said point of beginning North 89°15'53" East 3.00 feet; thence curving to the left on an arc of 22.00 feet radius, said arc being subtended by a chord bearing South 46°05'02" East 31.30 feet; thence South 1°25'58" East 3.00 feet; thence curving to the right on an arc of 25.00 foot radius, said arc being subtended by a chord bearing North 46°05'02' West 35.57 feet to the point of beginning.

parties named herein, for the term and upon the conditions set forth  
Case 08-35653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc  
Dated April 18, 1972  
Lessor : Greenback Associates  
Lessee : The Goodyear Tire & Rubber Company, an Ohio corporation  
Term : Fifteen (15) years  
Recorded : July 26, 1973, in book 7307-26, page 567,  
Official Records.  
Affects : All that portion of Lots 2 and 3, as shown  
official "Plat of Aeolia Heights", recorded in the office of the Recorder  
Sacramento county in Book 16 of Maps, Map no. 39, described as follows:  
Beginning at the southeast corner of said lot 3; thence from said point  
along the South line of said Lot 3, South 88°34'02" West 64.79 feet; then  
00°44'07" West 280.00 feet; thence North 88°34'02" East 170.00 feet; then  
00°44'07" East 280.00 feet to a point on the South line of said Lot 2; thence  
said South line South 88°34'02" West 105.21 feet to the point of beginning  
Westerly 30 feet and the Southerly 30 feet of said parcel shall be relinquished  
for road purposes whereby said parcel will have a net usable area of 140 feet  
Greenback Lane and a depth of 250 feet along an unnamed street to be constructed  
together with all structures now existing and to be erected thereon and all  
appurtenances thereto, herein called "premises."  
  
18. An easement affecting the portion of said land and for the purposes  
herein, and incidental purposes,  
In favor of : Sacramento Municipal Utility District, a California  
utility district  
For : Electrical facilities consisting of underground  
conduits, wires and cables, with associated  
aboveground or below ground transformers,  
pads, pedestals, service, terminal, splicing  
switching and pull boxes, switch and fuse  
cubicle pads, riser poles  
Recorded : April 5, 1974, in book 7404-05, page 424  
Official Records.  
Affects : 1. Within a strip of land of the uniform  
feet, the center line of which is described as follows: Beginning at a  
point hereinafter referred to as Point "A", in the east line of Parcel B  
parcel is shown on that certain Parcel Map entitled "PORTION OF LOTS 2 &  
HEIGHTS" recorded in the office of the Recorder of Sacramento County on  
1973 in Book 10 of Parcel maps at Page 36, from which point the northeasterly  
said Parcel B bears North 00°44'07" West 50.60 feet; thence from said point  
beginning South 88°34'02" West 140 feet to a point in the east line of a  
public street, now known as Arcadia Drive. 2. Within a strip of land of  
width of 10 feet, the center line of which is described as follows: Beginning  
Point "A"; thence from said point of beginning South 88°34'02" West 10 feet.

parties named herein,  
Case 08-35653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc  
Dated : Greenback Associates, a general partnership  
Lessor : CBS, Inc., a New York corporation  
Lessee : Recorded May 29, 1979, in book 7905-29, page 1015,  
Recorded Official Records.  
Affects : Parcel D

Said lease was amended by an instrument entitled "Memorandum of Amended Lease",  
executed by Greenback Associates and Pacific Stereo Corporation, recorded February  
20, 1986, in Book 8602-20, page 1281, Official Records.

20. An easement affecting the portion of said land and for the purposes stated  
herein, and incidental purposes,

In favor of : Sacramento Municipal Utility District  
For : Electrical facilities  
Recorded : July 26, 1979, in book 7907-26, page 984  
Official Records.  
Affects : Strips of land 10 and 20 feet in width traversing  
portions of premises

21. An easement affecting the portion of said land and for the purposes stated  
herein, and incidental purposes, shown or dedicated by the map of

Tract : Mitchell Farms  
For : Maintaining trees, installation and maintenance of  
electroliers, traffic control devices, water and gas  
pipes and for underground wires and conduits for  
electric and telephone services  
Affects : The Westerly 12.5 feet of Lots 8 and 9 and the  
Southerly 12.5 feet of Lot 9

22. A deed of trust to secure an indebtedness of the amount stated herein

Dated : July 3, 1986  
Amount : \$1,850,000.00  
Trustor : Greenback Associates, a California general  
partnership  
Trustee : Capital Conveyance Company, a California corporation  
Beneficiary : Capital Federal Savings and Loan Association, a  
United States corporation  
Recorded : July 16, 1986, in book 8607-16, page 1571,  
Official Records  
Instrument No. : 132809  
Loan No. : 01306170

## Statement of Leases as follows.

Case 08-35653-KRH Doc 3854 Filed 06/29/09 Entered 06/29/09 18:41:41 Desc  
Tenant Page 63 of 73 Term

Standard Oil	9/14/87
Space Shuttle	1/31/19
Econo Lube	9/30/01
Goodyear	1/31/89
Orotho Mattress	2/8/99
Pacific Stereo	9/30/90
Wendy's	8/1/99

24. Possible reciprocal rights for ingress, egress and parking between  
 herein described and adjacent parcels as disclosed by an inspection

25. Any easement or lesser right due to the existence of the following  
 by an inspection of said land:

- a) Various utility boxes and/or vaults for water, gas and electricity.  
 Affects portions of said land located within the planter areas and  
 portion of the parking area.
- b) Traffic control signals and street lights.  
 Affects a Southerly portion of Parcel 1 adjacent to Greenback Land

Statement of General Partnership of: Greenback Associates

Recorded : July 16, 1986, in book 8607-16, page 155  
 Official Records

Disclosing the General Partners as then being: Greenback Associates

Re-Recorded : August 14, 1986, in book 8608-14, page 1  
 Official Records

NOTE: Unless shown in the body of this preliminary report, there are no transfers, or agreements to transfer, the land described herein recorded during the period of six months prior to the date of this report, except as follows:

The land referred to herein is described as follows:

All that certain real property situate, lying and being in the County of Sacramento,  
State of California, described as follows:

PARCEL NO. 1:

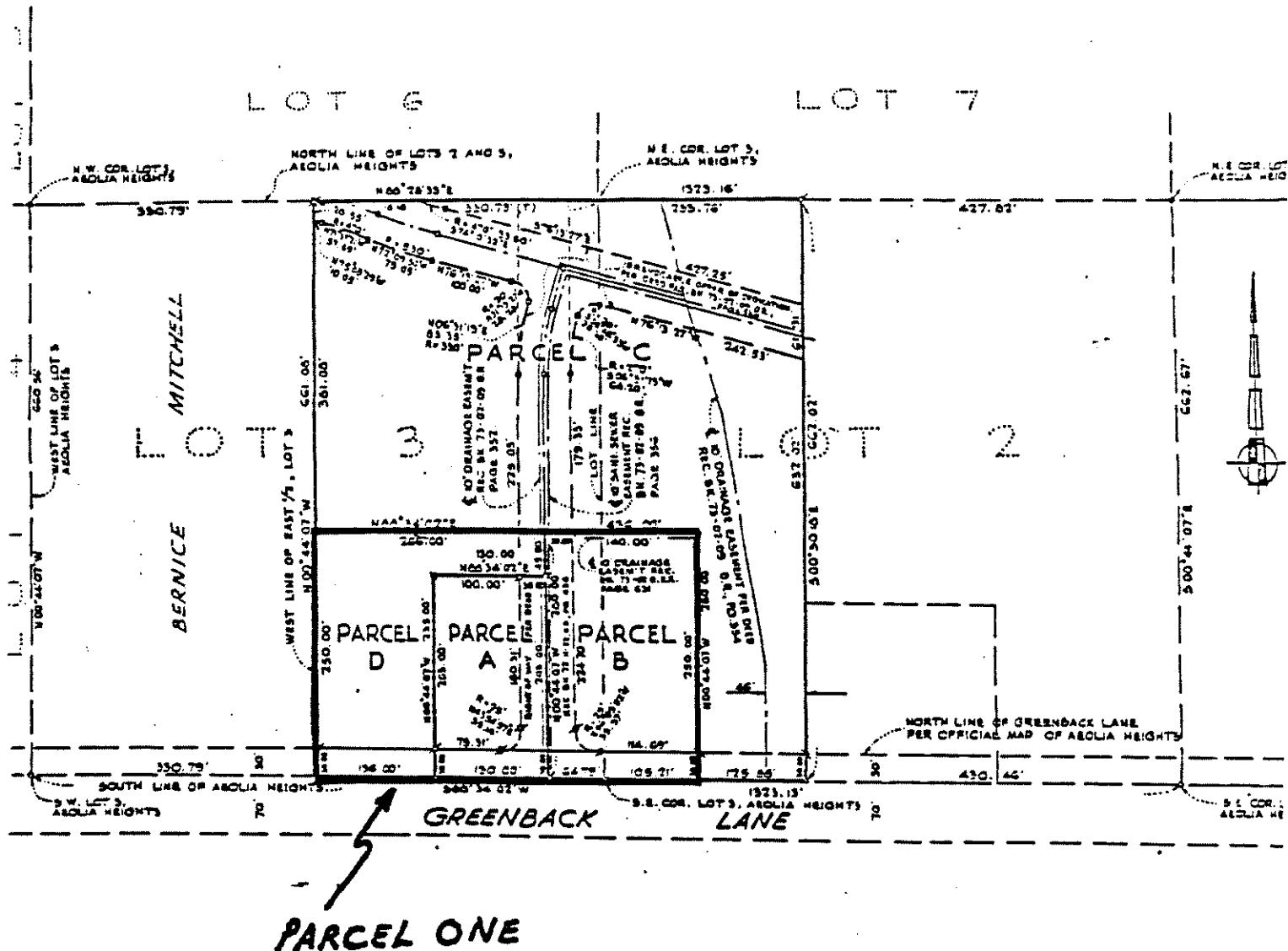
Parcels A, B and D, as shown on that certain Parcel Map entitled "Parcel Map of  
Portion of Lots 2 & 3, Aeolia Heights", recorded in the office of the Recorder of  
Sacramento County in Book 10 of Parcel Maps, at page 36.

PARCEL: NO. 2:

Lots 7, 8 and 9, as shown on the "Plat of Mitchell Farms", recorded in the office of  
the Recorder of Sacramento County, in Book 139 of Maps, Map No. 16.

ag/8219

SUTCLIFFE & MORROW  
Surveyors & Engineers



THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS  
BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIRE-  
MENTS OF THE SUBDIVISION MAP ACT AT THE REQUEST OF  
CHICOS REALTY IN NOVEMBER, 1972. I HEREBY CERTIFY THAT IT  
CONFORMS TO THE APPROVED TENTATIVE MAP AND THE CONDITIONS  
OF APPROVAL THEREOF, THAT ALL PROVISIONS OF APPLICABLE  
STATE LAW AND LOCAL ORDINANCES HAVE BEEN COMPLIED WITH.

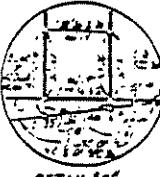
*Frank A. Morrow, Jr.*  
FRANK A. MORROW, JR. L.S. #275

THIS MAP HAS BEEN EXAMINED THIS 13<sup>th</sup> DAY OF ~~DECEMBER~~ 1973 FOR  
CONFORMANCE WITH THE REQUIREMENTS OF SECTION 11575 OF  
THE SUBDIVISION MAP ACT.

*L. D. Kin*  
COUNTY SURVEYOR OF SACRAMENTO COUNTY

LEGEND:

- X..... FOUND IRON BAR TAGGED L.S. 2846
- /..... FOUND 1/2" IRON PIPE



NOTES:

ALL LINES ARE TO BE READ FROM THE OUTSIDE IN  
A COUNTER CLOCKWISE DIRECTION.  
ALL LINES ARE TO BE READ FROM THE OUTSIDE IN  
A COUNTER CLOCKWISE DIRECTION.

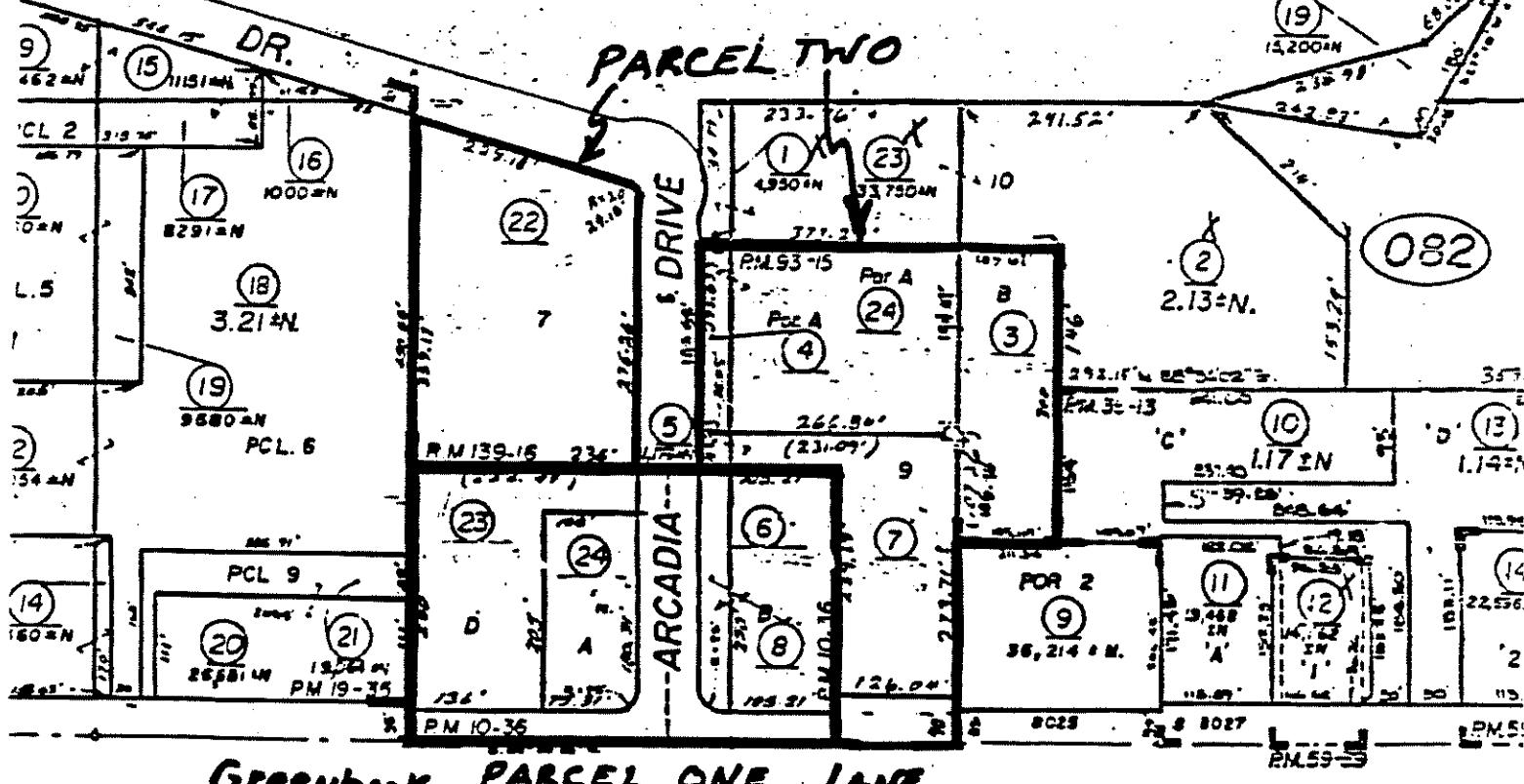
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## EXHIBIT B

Location #251  
7980 Arcadia Blvd.  
Citrus Heights, CA

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE ("Assignment") is made as of May 1, 1994, by and between CIRCUIT CITY STORES, INC., a Virginia corporation ("Assignor"); and CIRCUIT CITY STORES WEST COAST, INC., a California corporation ("Assignee").

RECITALS:

A. Assignor is the lessee under that certain lease or sublease described in Exhibit A attached hereto (as now or hereafter amended, "the Lease") for the premises described in the Lease (the "Leased Premises").

B. Assignee is a wholly-owned subsidiary of Assignor.

C. Assignor desires to assign its right, title and interest in the Lease to Assignee, and Assignee desires to accept such assignment and assume the performance of all of Assignor's obligations under the Lease on the terms set forth herein.

AGREEMENTS:

NOW, THEREFORE, it is mutually agreed among the parties as follows:

1. As of the date hereof, Assignor assigns, transfers, sells and conveys to Assignee (a) all of Assignor's right, title, interest and estate in and to the Lease and (b) all of Assignor's other rights, title and interest with respect to the Leased

Premises, including without limitation, all licenses, rights, permits, warranties and entitlements applicable to the Leased Premises.

2. As of the date hereof, Assignee accepts said assignment and expressly assumes the payment and performance of all of Assignor's obligations under the Lease arising from and after the date hereof.

3. Notwithstanding anything to the contrary contained herein, Assignor shall not be released from the performance of the lessee's obligations under the Lease, and Assignor shall remain primarily liable for said performance, including without limitation, the payment of all rent and the performance of all of the lessee's other obligations throughout the remainder of the term of the Lease.

4. Assignor warrants that it has good and marketable leasehold title to, and lawful possession of, the Leased Premises pursuant to the Lease. Assignor shall indemnify, defend and hold harmless Assignee from and against any loss, damage, claim, cost or expense (including reasonable attorneys' fees and litigation expenses) incurred or suffered by, or asserted against, Assignee as a result of a breach by Assignor of the foregoing warranty of title contained herein.

5. This Assignment shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

WITNESS the following signatures.

ASSIGNOR:

CIRCUIT CITY STORES, INC.

By: P Dunn  
Title: Treasurer

ASSIGNEE:

CIRCUIT CITY STORES WEST  
COAST, INC.

By: P Dunn  
Title: Treasurer + CFO

**EXHIBIT A**

The lease dated June 1, 1987 for the following premises between Greenback Associates and Circuit City Stores, Inc. as now or hereafter amended:

Location #251  
7980 Arcadia Blvd.  
Citrus Heights, CA

**PROOF OF SERVICE BY OVERNIGHT DELIVERY**

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 980 Fulton Avenue, Sacramento, California 95825-4558. On June 29, 2009, I deposited, with Federal Express, a true and correct copy of the within documents:

**RESPONSE OF GREENBACK ASSOCIATES, LLC TO  
DEBTORS' TENTH OMNIBUS OBJECTION TO CERTAIN  
DUPLICATE CLAIMS**

in a sealed envelope, addressed as follows:

Gregg M. Galardi, Esquire  
Ian S. Fredericks, Esquire  
Skadden, Arps, Slate, Meagher &  
Flom, LLP  
One Rodney Square  
post Office Box 636  
Wilmington, Delaware 19899-0636

Dion W. Hayes, Esquire  
Douglas M. Foley, Esquire  
McQuire Woods LLP  
One James Center  
901 E. Cary Street  
Richmond, California Virginia 23219

Chris L. Dickerson, Esquire  
Skadden, Arps, Slate, Meagher &  
Flom, LLP  
333 West Wacker Drive, Suite 2000  
Chicago, Illinois 60606

Robert B. Van Arsdale  
Office of the United States Trustee  
Richmond, Virginia office  
701 East Broad Street, Suite 4304  
Richmond, Virginia 23219-1888

Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 29, 2009, at Sacramento, California.

 Sandra Morris